

RICHMOND, CALIFORNIA, March 7, 2023

Community Services Building
440 Civic Center Plaza
Richmond, CA 94804

A. OPEN SESSION TO HEAR PUBLIC COMMENT BEFORE CLOSED SESSION

The Richmond City Council Evening Open Session was called to order at 4:31 p.m. by Vice Mayor Gayle McLaughlin.

B. ROLL CALL

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

C. CLOSED SESSION

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

- City of Richmond v. Pacific Gas & Electric

C.2 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.3 CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code Section 54956.8)

- Property: 1324 Canal Boulevard (General Warehouse, Port of Richmond)
Agency negotiators: Dave Aleshire, Lizeht Zepeda, and Nannette Beacham
Negotiating parties: Richmond Grown
Under negotiation: Price and terms of payment
- Property: South 45th Street to the west, Wall Avenue to the south, Interstate 80 to the east, and the BART tracks to the north
Agency negotiators: Anita Luck, Lina Velasco, Jesus Morales, and Nannette Beacham
Negotiating parties: Miraflores Community Devco, LLC
Under negotiation: Price and terms of payment

C.4 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 (Limited to items on the Closed Session agenda only)

The following individuals gave comments in-person: Tania Swartz, Jesus Beltran, Kevin Tisdell, Rosanne Rykin, Tiara Gonzales, and Gregory Everetts. Fidencio Morales and Naomi Williams gave comments via teleconference.

E. ADJOURN TO CLOSED SESSION

The Open Session adjourned to Closed Session at 4:48 p.m. Closed Session adjourned at 6:44 p.m.

F. REGULAR MEETING OF THE RICHMOND CITY COUNCIL

The Regular Meeting of the Richmond City Council was called to order at 6:47 p.m. by Vice Mayor Gayle McLaughlin.

G. ROLL CALL

Present: Councilmembers Bana, Jimenez, Robinson, Willis, Zepeda, and Vice Mayor McLaughlin. **Absent:** Mayor Martinez was absent for the entire meeting.

H. STATEMENT OF CONFLICT OF INTEREST

None.

I. AGENDA REVIEW

Item N.7.d was continued to March 21, 2023, and Item Q.3 was continued to the March 28, 2023, City Council meetings. The council requested that Item N.7.d be placed on the future agenda as a discussion item and not on the Consent Calendar.

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

Item C.1 (existing litigation) staff provided a status report on the case regarding Pacific Gas & Electric and the council gave direction to its negotiators concerning a settlement.

Item C.2 (anticipated litigation) the one case was not discussed.

Item C.3 (real property negotiations) staff provided a status report on the property located at 1324 Canal Boulevard and direction was given concerning negotiations. The property at South 45th Street was not discussed.

Item C.4 (labor negotiations) there was a discussion on the status of the various negotiations and direction was given to the city's labor negotiations representatives for continued negotiations.

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

Ms. Curl reported that the Federal Emergency Management Agency (FEMA) trailer was located in the Nevin Avenue parking lot between 24th and 25th streets to assist with disaster recovery for residents impacted by recent storms. Residents were encouraged to call the City Manager's Office at (510) 620-6512 with questions or for assistance. Ms. Curl announced that the City of Richmond's 16th Annual Sisters in Solidarity International Women's Day Celebration was on March 11, 2023, at the Richmond Memorial Convention Center Auditorium. Community members were encouraged to contact Trina Jackson-Lincoln at (510) 620-6581 with questions. Ms. Curl also announced that the city was conducting a survey for community input regarding the

Hilltop Horizon Specific Plan by visiting www.hilltophorizon.com. The survey was scheduled to close on March 15, 2023, at 12:00 p.m. Residents with questions concerning the specific plan or survey were encouraged to contact Roberta Feliciano at (510) 620-6662.

L. ABATEMENT REPORT FROM THE PUBLIC WORKS DIRECTOR - 1st Tuesday (public comment allowed under Open Forum)

Public Works Director Daniel Chavarria presented a PowerPoint that highlighted the following for the month of February 2023: Dumpster days in the East Shore and Parkview neighborhoods; illegal dumping; encampment abatement; 185.28 total tonnages abated; weed abatement; recreational vehicle dismantling; graffiti removal; 2,280 total abatement staff hours; and partnerships. Discussion ensued. The council requested staff to quantify the costs for trash removal with future abatement reports; and confirm if the Marina Bay neighborhood dumpster day scheduling was addressed.

M. OPEN FORUM FOR PUBLIC COMMENT

(public comment on items that remain on the Consent Calendar or items not on the agenda - limited to 2 minutes unless otherwise specified - Back and forth dialogue with the Council is prohibited)

The following individuals gave comments in-person:

Julie and Rick Perez gave comments regarding the police shooting involving their son Pedie Perez. Mrs. Perez expressed concerns regarding community policing. Mr. Perez shared his observations at the scene of a police investigation involving a descendant near Richmond railroad tracks.

Michael Gliksohn and Jane Courant expressed appreciation for the new City Council. Mr. Gliksohn gave comments in support of the Public Works abatement report. Mr. Gliksohn acknowledged the work done to restructure public debt to improve the city's credit rating. Ms. Courant gave comments in support of decisions made by the current council to improve life in the city.

Joe Puleo expressed appreciation for the civil tone of the new City Council. Mr. Puleo recommended the council consider dump permits for Richmond residents to help with costs. Mr. Puleo advised that the presence of dumpsters in the city and illegal dumping sites attracted more illegal dumping.

Ken Lind expressed concerns regarding the death of Pedie Perez. Mr. Lind suggested that Richmond police were not being funded correctly. Mr. Lind urged the council to pay competitive wages.

Kathleen Whimer expressed appreciation for the new City Council and in-person meetings. Ms. Whimer gave comments in support of the city's illegal dumping abatement efforts. Ms. Whimer gave comments in support of postponing Consent Calendar Item N.7.d concerning a contract for historic resource evaluations.

Jamin Pursell expressed appreciation for in-person meetings and encouragement of the new City Council for the diversity and resiliency of the city. Mr. Pursell gave comments in support of community art and culture. Mr. Pursell expressed concerns regarding wood pellets, deforestation, and the potential funneling through Richmond. Mr. Pursell urged the council to look into the matter and create green jobs that protected the planet and the future.

Tony Tomayo expressed appreciation for in-person meetings and the new City Council. Mr. Tomayo urged the council to consider the arts community in their policy-making decisions.

The following individuals gave comments via teleconference:

Mark Wassberg expressed appreciation to the City Manager's Office for assistance with a housing application. Mr. Wassberg expressed concerns regarding the vice mayor conducting the City Council meeting in the mayor's absence.

Naomi Williams on behalf of the Neighborhood Block Association announced the annual Richmond Juneteenth event scheduled for June 17, 2023, at Nicholl Park. Ms. Williams urged the council and community members to sign up for participation in the parade or for vending.

Tarnel Abbott gave comments in support of Consent Calendar Item N.4.a regarding a contract for library materials and services. Ms. Abbott advised difficulty opening City Council agenda documents on the city's website. Ms. Abbott requested that the sea level rise presentation presented by Christina Hill at the February 28, 2023, City Council meeting be published on the city's website. Ms. Abbott expressed appreciation for neighborhood dumpster days and recommended that Richmond Sanitary Service be forced to pay for bulky item pickups for multifamily dwellings. Ms. Abbott stated she was hopeful that metal recycling was happening with illegal dumping.

N. CITY COUNCIL CONSENT CALENDAR

(All items placed under the Consent Calendar are considered to be routine and noncontroversial. These items will be enacted upon together with a motion and second, without discussion, of any member of the City Council, and each item shall be deemed to have received the action recommended.)

Motion by Councilmember Willis

Seconded by Councilmember Bana

To approve all items on the Consent Calendar excluding Item N.7.d.

Ayes (6): Councilmember Bana, Councilmember Jimenez, Councilmember Robinson, Councilmember Willis, Councilmember Zepeda, and Vice Mayor McLaughlin

Absent (1): Mayor Martinez

Passed (6 to 1)

N.1 City Council

N.1.a Resolution Opposing Initiative 21-0042A1

ADOPT a resolution opposing initiative 21-0042A1 Restricting Voters' Input and Local Taxing Authority – Mayor Eduardo Martinez, Councilmembers Soheila Bana and Claudia Jimenez (510-620-6581).

Adopted Resolution No. 23-23

N.2 Community Development

N.2.a Contract Amendments Related to Castro Encampment Resolution Project for Security and Fencing

APPROVE a Second Amendment to the contract with Ascend Professional Services, LLC to increase the contract amount by \$732,996, for a total contract amount of \$1,107,996, to provide security guard services, for a term ending on June 30, 2024; and APPROVE a First Amendment to the contract with Chainlink Fence and Supply, Inc. to increase contract amount by \$69,029, for a total contract amount of \$93,538, for fencing installation at the Castro Encampment, with a term extending through December 31, 2023. Both contract amendments will be

paid using grant funds received for the Castro Encampment Resolution Project – Community Development Department (Lina Velasco/Jesus M. Morales 510-620-6706).

N.3 Finance Department

N.3.a Approval of Liens and Special Assessments for Unpaid Garbage Collection Service Fees Due to Republic Services

ADOPT a resolution authorizing placement of liens and special assessments for unpaid garbage collection service fees on Contra Costa County's property tax records – Finance Department (Delmy Cuellar 510-620-6790/Antonio Banuelos 510-620-6741).

Adopted Resolution No. 24-23

N.4 Library and Community Services

N.4.a Contract with Baker and Taylor for Purchase of Library Materials and Services

APPROVE the purchase of library materials for the Richmond Public Library from Baker and Taylor, Inc., in an amount not to exceed \$1,500,000, over a three-year period ending June 30, 2025, with two one-year options – Community Services Department (LaShonda White 510-620-6828/Wylendia Eastman 510-620-6963).

N.5 Mayor's Office

N.5.a Workforce Development Board

APPOINT Della Randolph to the Workplace Development Board, term expires, September 22, 2027 - Mayor's Office (Mayor Eduardo Martinez 510-620-6503).

N.5.b Appointment to the Arts and Culture Commission

APPOINT Lynson M. Beaulieu and Kaelen Van Cura to the Arts and Culture Commission, term expires, January 31, 2027 - Mayor's Office (Mayor Eduardo Martinez 510-620-6503).

N.5.c Community Police Review Commission

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

N.5.d Design Review Board

APPOINT David Plotkin to the Design Review Board, term expires, March 17, 2027 - Mayor's Office (Mayor Eduardo Martinez 510-620-6503).

N.6 Police Department

N.6.a Two-Year Sole-Source Contract with Police Strategies, LLC

APPROVE a two-year sole-source contract with Police Strategies, LLC, in an amount not to exceed \$45,000, to analyze and publish use-of-force data, with a term from January 17, 2023, through December 31, 2024, with two one-year extension options – Police Department (Chief Bisa French 510-621-1802).

N.7 Public Works

- N.7.a Preparation of Engineer's Report for Fiscal Year 2023-2024 for the Hilltop Landscape Maintenance District

ADOPT a resolution ordering the preparation of the Engineer's Report for Fiscal Year 2023-2024 regarding improvements and costs for the Hilltop Landscape Maintenance District - Public Works Department (Daniel Chavarria 510-620-5478/Greg Hardesty 510-620-6920).

Adopted Resolution No. 25-23

- N.7.b Preparation of the Engineer's Report for Fiscal Year 2023-2024 for the Marina Bay Landscape and Lighting Maintenance District

ADOPT a resolution ordering the preparation of the annual engineer's report for Fiscal Year 2023-2024 regarding improvements and costs for the Marina Bay Landscape and Lighting Maintenance District – Public Works Department (Daniel Chavarria 510-620-5478/Greg Hardesty 510-620-6920).

Adopted Resolution No. 26-23

- N.7.c Tom Horton Memorial Bench Donation

APPROVE the donation of a memorial bench dedicated to Tom Horton to be installed at Barbara and Jay Vincent Park – Public Works Department (Daniel Chavarria/Greg Hardesty 510-620-6920).

- N.7.d 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). This item was continued from the February 21, 2023, and February 28, 2023 meetings.

Continued to the March 21, 2023, City Council meeting.

O. PUBLIC HEARINGS

City Clerk Pamela Christian announced that it was time, pursuant to public notice, to hold a public hearing.

- O.1 Hold a public hearing to consider approval of an Encroachment Agreement Application for a private landowner encroachment into the unimproved public right-of-way at 8 Western Drive.**

ADOPT a resolution to approve an Encroachment Agreement Application for private landowner fence encroachment into the unimproved public right-of-way at 8 Western Drive; 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).

Vice Mayor McLaughlin announced the public hearing procedure. Public Works Director Daniel Chavarria introduced the matter. Robert Stevens of CSW/Stuber-Stroeh Engineering Group (CSW|ST2) presented a PowerPoint presentation that highlighted the following: property images, vicinity, and site maps; encroachment reason and requirements; and the city engineer's findings.

Discussion ensued. Vice Mayor McLaughlin declared the public hearing opened. The applicant's legal representative, Allan Moore, was given a total of eight minutes and summarized a letter emailed to the council in agreement with the staff report, proposed resolution, and findings in favor of the encroachment agreement. The applicant's design consultant, Michael Moloti, concurred with Mr. Moore and recommended that the installation of a sidewalk as proposed by CSW|ST2 be a gravel shoulder in lieu of a concrete sidewalk. The applicant, Ana Ortiz, gave comments regarding the vitalness of the fence and its necessity for safety concerns. The principal opponent, Richard Katz, was also allowed eight minutes and provided the history of the matter and reasons for registering a complaint with the city. The following individuals gave comments in-person: Lesli Handmacher, Joe Puleo, and Jamin Pursell. The following individuals gave comments via teleconference: Lousie G., Sara Cantor, Sophia Ortiz, Ron Park, Mark Wassberg, Chloe Affel, Ben Zicherman, Joyce Lopez, and Eli Berland. Mr. Moore and Mr. Katz each gave two-minute rebuttal statements. Vice Mayor McLaughlin closed the public hearing. Further discussion ensued. The council suggested that a graph of the general site area showing distinctions between adjacent property lines and encroachments would be helpful for future discussion. The council requested the city attorney to look into charging a fee as part of the city's encroachment process and determine if it should be retroactive.

Motion by Councilmember Zepeda

Seconded by Vice Mayor McLaughlin

To approve the staff recommendation and add the option to install a sidewalk as proposed by CSW|ST2. A friendly amendment by Councilmember Robinson, to direct staff to investigate the other properties along Western Drive to determine if there was an encroachment and if there was, consider extending the sidewalk, was accepted.

Ayes (4): Councilmember Robinson, Councilmember Willis, Councilmember Zepeda, and Vice Mayor McLaughlin

Noes (2): Councilmember Bana and Councilmember Jimenez

Absent (1): Mayor Martinez

Passed (4 to 3)

Adopted Resolution No. 27-23

P. BUDGET SESSION

P.1 Fiscal Year 2022-2023 Mid-Year Review

REVIEW the FY 2022-2023 mid-year budget which includes proposed budget adjustments increasing General Fund revenue by \$8,260,793 and expenditures by \$7,726,484, and increasing Non-General Fund revenue by \$4,179,075 and expenditures by \$1,358,660; and PROVIDE DIRECTION to staff – City Manager's Office/Finance Department (Shasa Curl/Nickie Mastay/Delmy Cuellar 510-620-6740).

City Manager Shasa Curl introduced the matter. Ms. Curl, Finance Director Delmy Cuellar, Accounting Manager Antonio Banuelos, Deputy City Manager Internal Services Nicky Mastay, and Budget Administrator Mubeen Qader presented a PowerPoint that highlighted the following: State audit recommendations; background information; General Fund expenditure and revenue; mid-year budget review and adjustments; options for council consideration; proposed mid-year budget; pending budget requests; responses to councilmembers questions; and next steps. Discussion ensued. The council

recommended staff make public the information that was provided for the state audit in terms of the forecasting used and data calculations. The council expressed concerns regarding negative fund balances for the Engineering Division's reimbursable grants. Staff clarified that the potential start date was June 1, 2023, not 2026 for Option B in the presentation regarding remote meetings for boards, commissions, and committees. The council requested the following: more information on utilizing American Rescue Plan Act funds to address remote meetings and city-wide paving, sidewalks, and traffic calming; risk levels since the year 2005; additional options to address the state audit; move proposed mid-year budget expenditure adjustment items that were not previously approved to the list of options for council consideration; determine if the proposed budget expenditure for Mark43 Fire CAD upgrade and hardware was previously voted on by the council; and options to gradually increase the risk level reserve. The council recommended staff hold off and return to the council with expenditure adjustments categorized by department; and add a line item or section to the proposed expenditures on pages 12-13 of the presentation for revenue-generating items. *(At 10:59 p.m. - a motion by Councilmember Willis, seconded by Councilmember Jimenez, to extend the meeting to finish Item O.1 and hear the public speakers before adjournment, passed by the following vote: Ayes: Councilmembers Bana, Jimenez, Robinson, Willis, Zepeda, and Vice Mayor McLaughlin. Noes: None. Abstentions: None. Absent: Mayor Martinez).* Oscar Seriano gave comments in-person. Tarnel Abbott and Mark Wassberg gave comments via teleconference. Further discussion ensued. The council requested staff to postpone this matter and provide by March 10, 2023, the proposed mid-year budget expenditure adjustment items that were not previously approved by the council. Vice Mayor McLaughlin encouraged the council to review the proposed mid-year budget adjustments categorized by department attached to the staff report as "Attachment 2", and provide any opposition and comments to staff before March 10, 2023.

Q. NEW BUSINESS

Q.1 Legal Services Agreement with Aleshire & Wynder, LLP for legal services in connection with proposed Chevron Hydrogen Fuel project and Reimbursement Agreement with Chevron

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 and APPROVE a Reimbursement Agreement between the City and the project applicant (Chevron) such that project applicant reimburses for City staff and the City's environmental consultants' costs and expenses - City Attorney's Office (James Atencio 510-620-6509). This item was continued from the February 21, 2023, and February 28, 2023 meetings.

Continued to the March 21, 2023, City Council meeting.

Q.2 Contract with The Pivotal Group Consultants, Inc.

APPROVE a contract and draft scope of work with The Pivotal Group Consultants, Inc. to host a City Council teambuilding retreat, and assist in developing and implementing a City-wide strategic plan, in an amount not to exceed \$288,796, with a term expiration of June 30, 2025. City staff will return on March 28, 2023, with an updated scope of work for review and consideration – City Manager's Office (Shasa Curl 510-620-6512). This item was continued from the February 28, 2023, meeting.

Continued to the March 21, 2023, City Council meeting.

Q.3 Report by the West Contra Costa Fire Safe Council

RECEIVE a presentation from West Contra Costa Fire Safe Council (WCCFSC) regarding its mission, objectives, and achievements – Fire Department (Chief Angel Montoya 510-307-8041). This item was continued from the December 20, 2022, January 24, 2023, and February 28, 2023, meetings.

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

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

None.

S. ADJOURNMENT

There being no further business, the meeting adjourned at 11:10 p.m., in memory of David Moore, to meet again on March 21, 2023.

Clerk of the City of Richmond

Mayor

From: [Amanda Le Gaux](#)
To: [City Clerk Dept](#)
Subject: RE: 1 public comments – Open Session prior to Closed Session CORRECTIONS
Date: Tuesday, March 7, 2023 1:15:42 PM

Good Evening City Clerk, Council Members, and Mayor.

My name is Amanda Y. Le Gaux, a member of the SEIU negotiating team. I am an Admin Aide for the Richmond Police Department and have been working for the City of Richmond for almost 13 years. I have to cross the bridge every day because as an employee of this city I cannot afford to live in the city I work in. Gas prices have gone up as well as the toll charges, this has impacted my finances negatively.

The recruiting and retention challenges have affected the entire city, the listed salaries are nowhere close to other cities in and around the County and the Bay Area. We have had recruits who have been given a conditional offer and jumped ship to another place of employment due to better salaries elsewhere. This has happened one too many times. The council has continued with wanting a better city for the residents but how can we begin to grant this when the employees who make the city better are in need and rightfully deserve better pay... Give us what we have worked hard for, give us the salaries that at minimum equally compare to the cities in and around the Bay Area so we can retain and recruit good quality people. How do you plan on keep the hardworking employees that you already have and how do you plan on recruiting more???? All of 1021 are THE backbone to this city. All of 1021 deserves more.

Best Regards,

Best Regards,

Amanda Y. Le Gaux
Personnel & Training
Richmond Police Department
1701 Regatta Boulevard
Richmond, CA 94804-7409
Direct: 510-621-1548
alegaux@richmondpd.net

From: [Cordell Hindler](#)
To: [City Clerk Dept User](#)
Subject: Public Comments- Open Forum
Date: Thursday, March 2, 2023 4:49:39 PM

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Hello Mayor Martinez, Council Members and Staff,

I Have Some Comments for the Record

1. For the April 18th Agenda, The Council Should Consider Reinstating the Agenda & Rules And the Public Safety Standing Committees,
2. Also to Have Danny Wan To Provide a Presentation on How the Port of Oakland is Recovering from the Pandemic

Sincerely
Cordell

From: [Debbie Rheuark](#)
To: [City Clerk Dept User](#)
Subject: public comments-Open Forum
Date: Monday, March 6, 2023 4:41:34 PM
Attachments: [Screenshot Richmond High 2023 Chinese New Years Parade.png](#)

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Hello,

I would like, and hope that the city council might join me, in recognizing the Richmond High School marching bands participation in the 2023 Lunar New Year parade last month. I am tardy in mentioning this as I had taped the parade and not watched until last week. I've attached a snip a photo from the You Tube video that starts showing the band at 37:00 minutes, continuing on until approx. 38:30 minutes. The KTVU commentators, Claudine Wong and Mike Mibach were very complementary. Very nice performance they should be proud of, and I hope that they can continue for many more years!

Thank you!



2023 Chinese New Year parade San Francisco



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From: allanmoorelaw@gmail.com
To: [City Clerk Dept User](#)
Cc: [Stephanie Vollmer](#); [Daniel Chavarria](#)
Subject: Ortiz Family/8 Western Drive, Richmond/City Council Hearing March 7, 2023
Date: Monday, March 6, 2023 10:12:18 AM
Attachments: [City of Richmond Letter March 6^LLJ 2023 #3.pdf](#)
[8 Western City Fence approval 2017.Exhibit A.pdf](#)
[8 Western Encroachment permit filing.Exhibit B.pdf](#)

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City Clerk's Office:

Please see our office's letter on behalf of the Ortiz Family, dated today, March 6, 2023, with regard to the Ortiz Family application for 8 Western Drive, on the City Council Agenda for tomorrow, March 7, 2023. Please do not hesitate to contact me with any questions.

Law Office of Allan Moore, A.P.C.
Cell: (925) 963-3477
Email: allanmoorelaw@gmail.com

March 6, 2023

Via Email
Attn: City Clerk
cityclerkdept@ci.richmond.ca.us

Mayor and City Council
City of Richmond
Attn: City Clerk
450 Civic Center Plaza
Richmond, CA 94804

**Re: City Council March 7, 2023 Public Hearing, Agenda Item O
8 Western Drive, Richmond
Ortiz Family Encroachment Agreement**

Dear Mayor Martinez and Council Members:

My law office represents Anna Ortiz, her husband James, and their daughter (the “Ortiz Family”) with regard to their request for a new encroachment agreement (“New Encroachment Agreement”) for their fencing (Fence) and improvements at 8 Western Drive in Richmond.

It has truly been a privilege to work with the Ortiz Family on this matter. They are a wonderful, hard-working Richmond family. As set forth herein, the Ortiz Family has done absolutely nothing wrong in this matter – the Ortiz Family purchased their home with the Fence already constructed, and with full City approvals of the Fence and a signed, City- approved earlier encroachment agreement.

The Ortiz Family has worked long and hard with Public Works, City Staff, and all City representatives with regard to this New Encroachment Agreement, and appreciates the City’s assistance. Similarly, my office appreciates the responsiveness of the City Attorney and Public Works in working with the Ortiz Family and our office during this process.

After all of this time and work, Public Works has issued a Staff Report (“Staff Report”) for the City’s March 7, hearing. In the Staff Report, Public Works sets forth a clear and unequivocal recommendation in favor of the New Encroachment Agreement.

Therefore, as set forth below, *the Ortiz Family hereby agrees with the Public Works recommendation in favor of the Encroachment Agreement, together with the conditions of approval as set forth in the proposed Resolution.*

Given the importance of the issuance of the Encroachment Agreement to the Ortiz Family, our office must necessarily set forth below:

- (i) a brief, summary background of this issue, and
- (ii) (ii) a brief discussion of the Ortiz Family's legal rights.

With regard to our discussion of the Ortiz Family's legal rights, *please understand we are required by law to note any potential claims and to reserve the Ortiz Family's rights prior to the City Council decision on this matter.*

Stated another way, it is not our desire to challenge the City; instead, it is our sincere desire that the City approve the proposed Encroachment Agreement so that the Ortiz Family can continue to work with City.

I. **Background**¹

A. **The Fence was Constructed and Approved Prior to Purchase of the Residence by the Ortiz Family**

The Ortiz Family purchased their home at 8 Western Drive on or about July 30, 2021. At the time of their purchase, the sellers of the home ("Sellers") had *already constructed* the subject fencing ("Fence") on the property, pursuant to permit(s) issued by the City of Richmond ("City").

Please see the City-documented timeline as follows:²

The City issued the Fence permit on December 21, 2017. Attached hereto as **Exhibit A** is a copy of the Fence permit, stamped twice as "APPROVED" by the City.

The Sellers constructed the Fence in February 2018, pursuant to the City approved permit.

Following a City determination that the Fence was in the City ROW, the City requested the Sellers to enter into the first Encroachment Agreement ("First Encroachment Agreement"). The Sellers submitted an application for the First Encroachment Agreement on or about March, 2021.

¹ This **Background** is intended to be a brief summary only, and does not include all facts. The background facts of this matter can be found in the Ortiz Family's consultant letter, dated February 7, 2023, submitted by Milani & Associates.

² This City timeline is confirmed by the Staff Report for the Council hearing, at pp. 2-3.

The City and the Sellers entered into the First Encroachment Agreement for the Fence on July 12, 2021. Attached hereto as **Exhibit B** is a copy of the signed First Encroachment Agreement.

Stated another way, the Ortiz Family purchased their home on July 30, 2021, *after* the Fence permit and First Encroachment Agreement were already approved, and *after* the Fence was fully constructed.

The Ortiz Family, in purchasing their home, relied on the City- approved Fence permit (Exhibit A), and the City-executed Encroachment Agreement (Exhibit B).

B. City Confirms City Made Mistake

After the Ortiz Family purchased their home, the City determined it had made a “mistake” in issuing the Fence permit and in entering into the First Encroachment Agreement.

By letter dated February 7, 2022 to the Ortiz Family (“City Letter”), the City stated that the City entered into the First Encroachment Agreement pursuant to a Staff analysis that mistakenly referenced the front yard as a side yard.

Given this mistake, and after the Ortiz Family had purchased the property, the City Letter terminated the First Encroachment Agreement, and terminated the Fence permit.

The City Letter indicated that even if the Ortiz Family relied on the City approvals (under a legal term called “equitable estoppel”) such reliance does not apply here given the zoning and public rights involved. (Please see our legal response in “Section II, Legal Analysis,” below).

The City Letter indicated that the timing of the termination of the Fence permit and First Encroachment Agreement would be extended, to allow the Ortiz Family to file for a new Encroachment Agreement (“New Encroachment Agreement”), following adoption of a new encroachment agreement ordinance (“New Ordinance”).

The Ortiz Family, although significantly harmed by the City’s termination, elected to work with the City, and to “exhaust their administrative remedies,” and apply for a New Encroachment Agreement under the New Ordinance.

C. City adopts New Ordinance

The City adopted the New Ordinance on June 28, 2022. The Ortiz Family worked with the City, and submitted applications for a New Encroachment Agreement under the New Ordinance.

The Ortiz Family, in working with the City, spent thousands of dollars on consultants. The Ortiz Family retained civil engineer Mike Milani of Milani & Associates to prepare, submit and process their new applications under the New Ordinance.

D. Ortiz Family Submits New Applications

The Ortiz Family, their attorneys and Milani & Associates worked with the City, and timely submitted their application for the New Encroachment Agreement on July 6, 2022. The Ortiz Family, their attorneys and Milani & Associates thereafter worked closely with Staff to comply with all aspects of the New Ordinance.

Pursuant to Staff request, Milani & Associates recently submitted an extensive supplemental information for the application on February 9, 2023.

E. Public Works Staff Report and Recommendations in Favor of Project

Based on the Ortiz Family's applications, the Public Works Staff Report for the March 7 hearing clearly and unequivocally recommends approval of the Project.

The Public Works Staff Report confirms that all of the requirements and findings set forth in the New Ordinance can be made by the City Council, and recommends approval of the proposed Resolution.

F. Ortiz Family Agreement

The Ortiz Family concurs and agrees with the Public Works recommendation, and the proposed Resolution.

The Ortiz Family has one minor recommendation with regard to the conditions set forth in the Resolution. The Staff Report and the proposed Resolution indicate that the approval should be conditioned "to provide a four foot sidewalk with a protective curb" to the "satisfaction of the City Engineer."

The Ortiz Family requests the City Engineer consider a crushed gravel sidewalk in this area, rather than concrete, as such material would be more consistent with the area (there are currently no sidewalks on either side of the Ortiz property frontage – so a concrete sidewalk would not connect with a similar concrete sidewalk.)

II. Legal Analysis

A. Overview

The Ortiz Family purchased their home in good faith reliance on (i) the existing Fence, and (ii) the Fence Permit and the First Encroachment Agreement. The City thereafter terminated the earlier approvals, indicating they (the City) had made a "mistake."

The Ortiz Family, while hurt by the City's position, chose to work with the City, to follow the City's direction, and to "exhaust their administrative remedies." The Ortiz Family worked hard with City Staff, and spent tens of thousands of dollars on consultants. The Ortiz Family thereafter filed a new application for a New Encroachment Agreement under the City's New Ordinance

The result of all of the Ortiz Family work is the Public Works' current strong and clear recommendation to the Council for approval of the new Encroachment Agreement at the March 7 City Council hearing.

At this point, after all this time, and after all the monies spent by Ortiz in good faith and reliance on the City, we respectfully believe it would be highly unfair and improper for the City to deny the new Encroachment Agreement application.

As stated, given all of these extraordinary circumstances, we are required by law to "reserve" our legal rights and we necessarily do so as set forth below.

B. Reservation of legal rights

(i) Equitable Estoppel

As stated above, the City's February 7, 2022 letter ("City Letter") terminated (with allowance for re-application under the New Ordinance) the earlier-granted Fence Permit and First Encroachment Agreement.

In the City Letter, the City indicated that the City had made a "mistake" in granting the earlier Fence permit and in entering into the First Encroachment Agreement.

In many cases, the Ortiz Family and other families are protected when such mistakes occur, under a principle called "equitable estoppel." Equitable estoppel generally prevents one party (the City), from taking legal action the conflicts with previous promises or behavior. Essentially, equitable estoppel prevents a party from "going back on his word," or "not acting fairly."

The City Letter, however, states that the Ortiz Family cannot rely on the City-approved Fence Permit and the First Encroachment Permit – because they were either "mistakenly or illegally" issued by the City. The City states that no rights were given to the Ortiz Family because the approvals were in conflict with public rights. The City Letter states that public rights cannot be violated by a city official. In this regard, the City letter cites the case *Pettitt v. City of Fresno* (34 Cal.App.3d 813 (1973)).

Respectfully, we do not believe that *Pettitt v. City of Fresno* is the controlling authority here. In *Pettitt*, the Court ruled that the community interest in preserving the zoning laws outweighs the individual's interest in relying on an invalid building permit. In *Pettitt*, however, the zoning violations were clear and significant — allowing the applicant to place a *commercial*

establishment in a residential zone. The Court found a public interest in zoning laws intended to maintain the (residential) character of the area. (The Court left open whether the Pettitts could sue the City for damages).

In our case, the violations of the zoning ordinance are unclear at best—and in any event there are no strong zoning/policy reasons making it necessary to terminate the earlier City approvals. In our case, the Ortiz home, with or without the Fence, remains a residential use in a residential zone. The Fence does not change the character of the neighborhood.

More importantly, in our case, the Ortiz Family did not rely on a mere procedural “mistake” by a public official. The Ortiz Family also relied on a written contract signed by the City and the Ortiz Family predecessors (the First Encroachment Agreement). The First Encroachment Agreement was expressly binding on all legal successors. In our case, there are issues of contract law – not just zoning law.

With regard to equitable estoppel, our case is closer to the line of cases allowing a governmental agency to be estopped where injustice would result from a failure to uphold the estoppel. The injustice in our case, is clear. (See, for example, *Anderson v. City of La Mesa* (118 Cal. App. 3d 657 (1981), distinguishing *Pettitt*, and upholding estoppel even where there was a minor violation of a specific plan ordinance.)

ii. Due Process and Equal Protection

The California Constitution, Article I, Sect. 7, provides that “[A] person may not be deprived of life, liberty or property without due process of law.” Generally, due process is a safeguard to ensure that rights are not taken by a city without a fair process or procedure.

In our case, the facts are extraordinary. Unlike the facts of *Pettitt v. Fresno*, there was no mere “mistake” by a local zoning official. The Ortiz Family relied on fully issued permits, and on the First Encroachment Agreement fully executed by the City. The City thereafter unilaterally terminated those approvals without a hearing.

The equal protection laws generally provide that the government should treat an individual in the same manner as others in similar conditions and circumstances.

If the Ortiz Family are now denied their New Encroachment Permit, they would be “singled out” for such denial and enforcement action. Everyone that has visited the Ortiz Family property has noted that other properties along Western Drive have similar encroachments in the City’s Right of Way.

We note, for example, the next door neighbors at 20 Belvedere Avenue appear to have placed significant rock boulders, tree stumps, structures, and related improvements within the same City Right of Way and right along Western Drive. The purpose of these boulders, tree stumps and related improvements is evidently to act as a “wall” or “fence” to keep folks from parking or walking up to the neighbor residence. (See also earlier Encroachment Agreement at 317 Western Drive granted by City of Richmond.)

Under these circumstances, we do not understand how the City could “deny” the Ortiz Family their proposed Fence because it partially encroaches within the City Right of Way – while allowing neighbors (and others) to construct improvements in the same City Right of Way.

iii. Health and Safety and Racial Issues

The Ortiz Family has previously appeared before the City Council, and has set forth certain health, safety and racial issues that they have been subjected to at their home. Please see in this regard the Ortiz Family testimony at the City Council public hearings of January 18, 2022, and April 19, 2022. We would ask that the Ortiz Family testimony at those hearings be placed as part of the administrative record in this case.

With regard to health and safety, please note that the Ortiz property is directly across from the state Keller Beach Park (“Park”). The Park has a public shower and restroom in direct view of the Ortiz residence. Throughout the day, the general public, transients, and others utilize the Park and the facilities. When the Park closes, folks come across the street and camp and loiter – and they often find their way, even with the Fence, to the Ortiz Family front door – ringing the bell in the middle of the night. City Police officers have advised the Ortiz Family to “keep their Fence” to prevent these occurrences.

The Fence helps to protect the Ortiz Family from all such activity. The Fence further helps to protect the yard from dumping and blight from such activity.

With further regard to health and safety issues, property to the north of the Ortiz Family property appears to be advertised by website, and utilized as an “archery range” by the public and neighbors. The Ortiz Family has been subjected to arrows flying into their yard (one narrowly missing their daughter); and axe throwing all around the perimeter of their property. The Ortiz Family has timely notified the City and City code enforcement of these incidents. Again, we would request that notice of those complaints from the Ortiz family be placed in the administrative record in this matter. The proposed Fence helps provide protection from these dangers.

Finally, with regard to racial issues, the Ortiz Family has appeared before the Council on the referenced dates and indicated as follows: (i) people have driven by their house and called out racial slurs and sexist comments; (ii) someone threw beans and a small Mexican figure in a sombrero over their Fence; and (iii) similar incidents. Most recently, the Ortiz Family’s “Notice of Hearing” (placed by the Ortiz Family on their Fence as required by the New Ordinance) was defaced with a racial slur.

These issues all warrant the continued protection of fencing along the Ortiz Family border.

Conclusion

For all of these reasons, the Ortiz Family respectfully requests the City Council to approve the City and Ortiz Family to enter into a New Encroachment Agreement, as provided in the proposed Resolution.

Very truly yours,

LAW OFFICE OF ALLAN MOORE, A.P.C.



Allan C. Moore

Enclosures

Exhibit A Fence Permit

Exhibit B First Encroachment Agreement

cc: Stephanie A. Vollmer (Deputy City Attorney) (w/enc.)

Daniel Chavarria (Director of Public Works) (w/enc.)

EXHIBIT "A"

APPROVED
CITY OF RICHMOND
PLANNING DIVISION
Phone: (510) 620-6706 *PLN*
Fax: (510) 620-6858
PROJECT NO. *PLN17-670*
PLANNER *[Signature]* DATE *11/17/17*



450 Civic Center Plaza
Richmond, California 94804-1630
P.O. Box 4046
www.ci.richmond.ca.us/planning

PLANNING APPLICATION FORM

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)

- | | | | |
|---|--|---|--|
| <input type="checkbox"/> Plan Amendment/Rezone | <input type="checkbox"/> Variance | <input type="checkbox"/> Certificate of Compliance | <input type="checkbox"/> Zoning Verification Letter |
| <input type="checkbox"/> Zoning Ordinance Amendment | <input type="checkbox"/> Design Review Permit | <input type="checkbox"/> Lot Line Adjustment | <input type="checkbox"/> Over-the-Counter Plan Check |
| <input type="checkbox"/> Conditional Use Permit | <input type="checkbox"/> Zoning Administrator Permit | <input type="checkbox"/> Historic Preservation Permit | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Administrative Use Permit | <input type="checkbox"/> Tentative Parcel Map | <input type="checkbox"/> Sign Permit | |
| <input type="checkbox"/> Temporary Use Permit | <input type="checkbox"/> Tentative Tract Map | <input type="checkbox"/> Fence Permit | |

PROJECT INFORMATION

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

APN(s):

Project Description: *Fence (6 FT.)*

PROPERTY OWNER ACKNOWLEDGEMENT & AUTHORIZATION

Property Owner's Name: *Chloe Affel + Ben Zicherman*

Mailing Address: (Street, City, State, Zip) *8 Western Dr. Richmond, Ca. 94801*

Phone: *510-579-3592* Fax:

Email: *chloe@chloeaffel.com*

I recognize that this application is subject to the California Environmental Quality Act (CEQA). The City, in granting this application, may attach any conditions necessary to insure that the proposal will not be detrimental to the welfare of property or persons residing or working in the neighborhood or in the City. I further certify that the information and exhibits submitted for this proposal 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 that conditions of approval are binding. I agree to be bound by those conditions, subject only to the right to object at the hearing on this application or during the appeal period.

X *[Signature]*
Signature

11/7/17
Date

APPLICANT ACKNOWLEDGEMENT & AUTHORIZATION

Applicant's Name: *Chloe Affel + Ben Zicherman*

Mailing Address: (Street, City, State, Zip) *8 Western Dr. Richmond, Ca. 94801*

Phone: *510-579-3592* Fax:

Email: *chloe@chloeaffel.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 object at the hearing on this application or during the appeal period. If this application has not been signed by the property owner, I have attached separate documentation of full legal capacity to file this application and agreement to conditions of approval, subject only to the right to object at the hearings or during the appeal period.

X *[Signature]*
Signature

11/7/17
Date

PLANNING DIVISION USE ONLY

File No.: *PLN17-670*

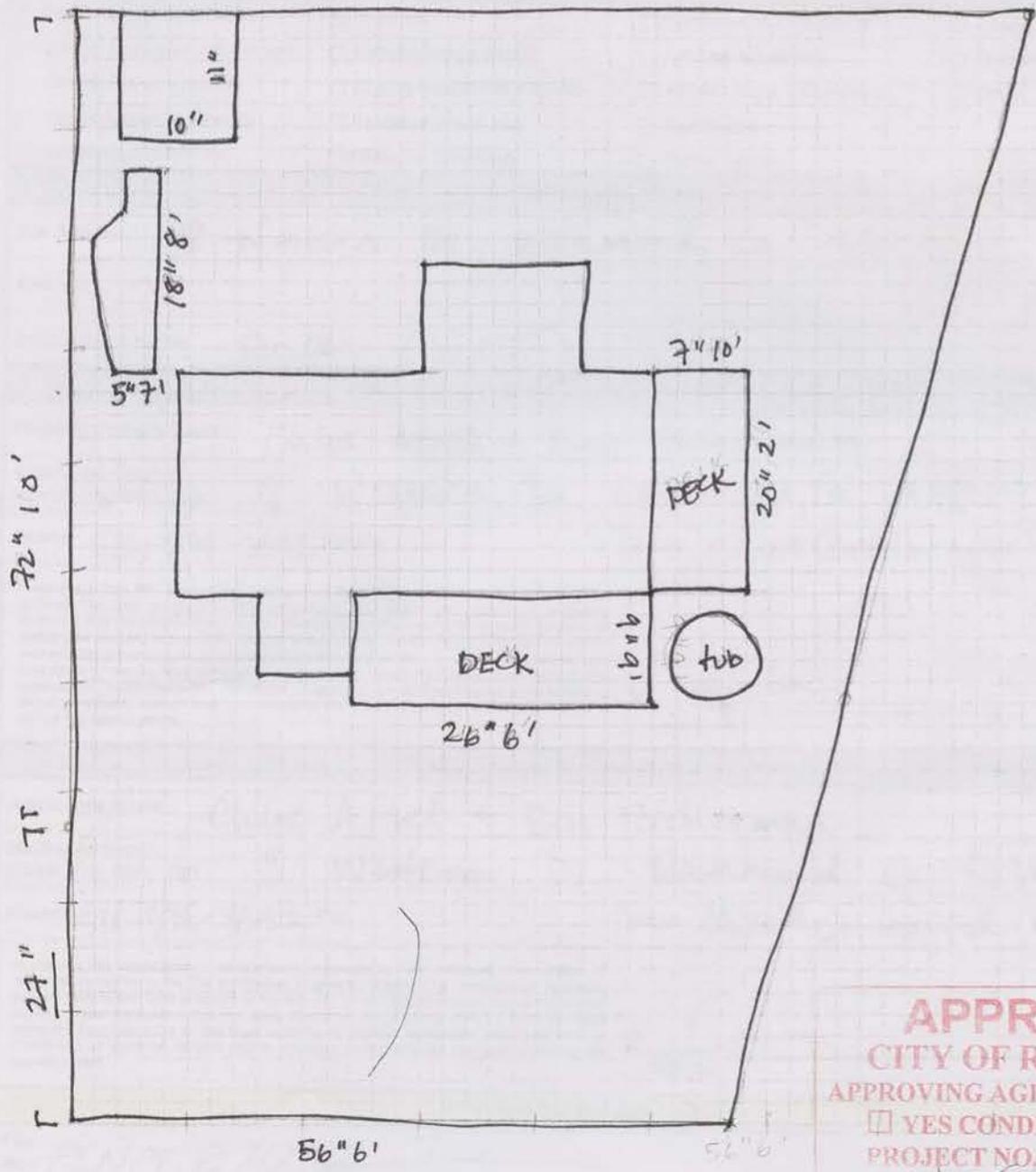
Intake Staff: *[Signature]*

Applied Date: *11/21/17*

driveway

75 71" 21

7



APPROVED
CITY OF RICHMOND
 APPROVING AGENCY *PLK*
 YES CONDITIONS NO
 PROJECT NO. *PLN17-670*
 PLANNED *42* DATE *10/21/17*

□ = 2ft.

WESTERN DR

61' 4'

75 38' 6'



CITY OF RICHMOND

450 CIVIC CENTER PLAZA • RICHMOND, CA 94804
(510) 620-6706

INVOICE

APPLICANT

CHLOE AFTEL
8 WESTERN DRIVE
RICHMOND, CA 94801

Project Number: PLN17-670

Address: 8 WESTERN DR

Invoice Date: 12/21/2017

Project Name

NEW FENCE

CONTACT: Planning Division

Fee Description

Comments

Account

Qty/ Units

Amount

DRR - Over The Counter Fence Review

15061219340408

0.00

\$53.00

TOTAL AMOUNT DUE:

\$53.00

Fees are assessed in accordance with the provisions set forth in the fee schedule adopted by resolution by the City of Richmond.

Visit <http://www.ci.richmond.ca.us/2503/Master-Fee-Schedule>

The laws of the City of Richmond are codified in its City Charter and Municipal Code, which is comprised of ordinances passed by the City Council.

Visit <https://library.municode.com/ca/richmond>

PAID

DEC 21 2017

CITY OF RICHMOND
FINANCE DEPARTMENT

Sfn
ck #139

EXHIBIT "B"



* \$ R 0 0 0 0 4 5 3 6 5 1 \$ *

RECORDED AT REQUEST OF:
City of Richmond

WHEN RECORDED MAIL TO:
City of Richmond
City Clerk's Office
450 Civic Center Plaza, Suite 300
Richmond, CA 94804
APN 558-012-021-9

**NO RECORDING FEE PURSUANT TO
GOVERNMENT CODE SECTION 27383**

Electronically Recorded
CONTRA COSTA Co Recorder Office
DEBORAH COOPER, Clerk-Recorder
DOC - 2021-0215157
Monday, Aug 2, 2021 11:17:00



Total Paid: No Fee

Receipt #: 202100162991

19 - eRecording Partners Network LLC

220 / ABPC / 1-9

DOCUMENT TITLE

**ENCROACHMENT AGREEMENT BETWEEN
CITY OF RICHMOND AND CHLOE AFTEL AND BENJAMIN J.
ZICHERMAN**

ENCROACHMENT AGREEMENT

THIS AGREEMENT made and entered into this 12th day of July, 2021 by and between the CITY OF RICHMOND, a municipal corporation and charter city hereinafter called "CITY" and Chloe Aftel and Benjamin J. Zicherman, hereinafter called "OWNER," with regard to real property located in the City of Richmond, County of Contra Costa, California, commonly known as 8 Western Drive.

WITNESSETH

WHEREAS, OWNER has title to property situated within the City of Richmond, County of Contra Costa, State of California, as more particularly described as BAY SHORE TRACT LOT 33 & 34, Book 7, Assessor's Map, Richmond (APN 558-012-021-9); and

WHEREAS, OWNER has requested City to permit the construction of a fence from the edge of the property 27.57 feet from left fence to street, 41.7 feet from front of house in street 38.67 feet from right of house to street for a total of 1580 square feet of encroachments with property improvements along the north edge of Western Drive (the "Encroachments"); and

WHEREAS, the Encroachment will encroach into the Public Right-of-Way heretofore dedicated as Western Drive as shown on the Boundary Survey and as described in the Legal Description dated 06/04/2021 and 06/23/2021, respectively, and attached hereto and made a part hereof by this reference as Exhibit A.

NOW, THEREFORE, it is hereby agreed as follows:

1. CITY hereby authorizes the placement and construction of the Encroachments at the OWNER' expense as shown on the Planning Application Form dated 11/07/2017 and attached hereto and made a part hereof by this reference as Exhibit B. The Encroachments are to be placed and constructed in conformance with standards to be established by the CITY Engineer.
2. OWNER shall obtain all necessary approvals from the Planning, Building Regulations and Engineering Departments of CITY and all affected utility companies prior to the placement and construction of the Encroachments.
3. OWNER hereby agrees to maintain the Encroachments as required by the CITY Engineer, and to remove any and all of the Encroachments without any expense to, or replacement of improvements by CITY or public utility company upon ninety (90) days notice by CITY or immediately by CITY, whenever, in CITY'S opinion, the condition of the Encroachments are determined to constitute a hazard to safety, health or public welfare or the affected area is needed for municipal or public utility purposes. Following the removal of the Encroachments, the OWNER shall restore the public right-of-way to a condition approximately the same as the condition of the right of way prior to installation of the encroachments.

4. OWNER hereby agrees to remove the curb side parking in front of the encroachment, if the City determined that public health or safety so requires.
5. OWNER hereby agrees to maintain the area over which said Encroachments are located in a manner as required by the CITY Engineer for the life of this Encroachment Agreement.
6. OWNER hereby agrees to restore the area over the Encroachment for the public use when the Encroachment is terminated, modified, deviated from the original Encroachment improvement or rescinded by the City for any reasons.
7. OWNER agree to indemnify, defend and hold harmless CITY and all of its Councilmembers, employees, officers and agents from all liability, claims, suits, damages, attorney's fees, costs and expenses resulting from injury or damage to persons or property which may result from the maintenance, placement and/or construction of the Encroachments.
8. OWNER agrees to provide CITY with certificates of general liability insurance satisfactory to the City Attorney and Risk Manager. Certificates of liability insurance must be provided to the CITY annually. OWNER must notify CITY thirty (30) days prior to cancellation or change in said insurance.
 - a. General Liability insurance with minimum limits of \$1 million per occurrence and \$2 million in the aggregate shall be maintained at all times during the term of this Encroachment Agreement.
 - b. The City of Richmond, its officers, officials, employees, agents and volunteers are to be named as additional insured's for all liability arising out of ownership, maintenance or use of the part of the premises located within the encroachment area. An additional insured form CG 2012, or equivalent, is required. OWNER shall provide Certificate of Insurance naming the City of Richmond as additional insured; with the liability insurance limits of \$1,000,000.00 for each occurrence and \$2,000,000.00 in the aggregate.
 - c. The OWNER'S insurance coverage must be primary as it pertains to the City, and the City's insurance or self insurance shall not be called upon to contribute to any loss or claim.
 - d. OWNER'S insurance will provide a waiver of subrogation in favor of the City by virtue of payment of loss by OWNER'S insurance coverage.
 - e. OWNER shall maintain continuous coverage for the life of this Encroachment Agreement. Should OWNER fail to maintain insurance as required, the City may take such action as it deems necessary to protect the City's interests. Such action may include but is not limited to termination of this Encroachment Agreement or other action as the City deems appropriate.

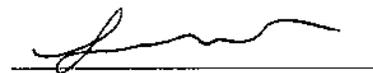
9. It is further understood and agreed that this Encroachment Agreement shall be recorded in the office of the County Recorder of Contra Costa County, California, and that the term OWNER as used herein is binding on the legal owner of Chloe Aftel and Benjamin J. Zicherman so long as the ownership of the described property, and thereafter the terms of the Encroachment Agreement will be binding upon any legal successor to Chloe Aftel and Benjamin J. Zicherman.

IT WITNESS WHEREOF, the parties have executed this Encroachment Agreement as of the date first herein above written.

Attest:

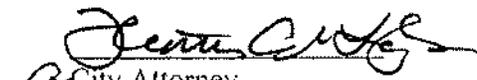
CITY OF RICHMOND, a
municipal corporation


City Clerk

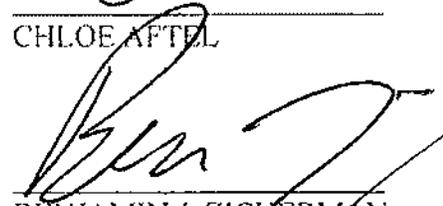

City Manager - *LAURA Snideman*

Approved as to Form:

OWNERS:


City Attorney


CHLOE AFTEL


BENJAMIN J. ZICHERMAN

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

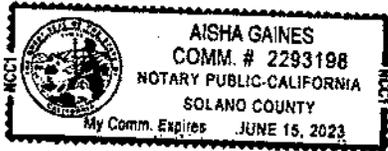
County of ALAMEDA

On 12 JULY 2021
Date

before me, AISHA GAINES NOTARY PUBLIC
Here Insert Name and Title of the Officer

personally appeared CHLOE AFTEL & BENJAMIN S. ZICHERMAN
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



My Comm. Exp. June 15, 2023

Place Notary Seal and/or Stamp Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

[Handwritten Signature]
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: ENCROACHMENT AGREEMENT

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer -- Title(s): _____

Partner -- Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is Representing: _____

Signer's Name: _____

Corporate Officer -- Title(s): _____

Partner -- Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is Representing: _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Contra Costa)

On July 23, 2021 before me, Ursula Irene De Loa, Notary Public
(insert name and title of the officer)

personally appeared Laura Snideman
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Ursula Irene De Loa (Seal)

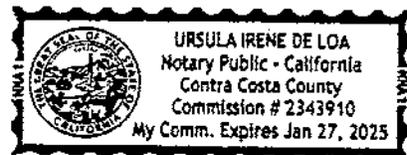
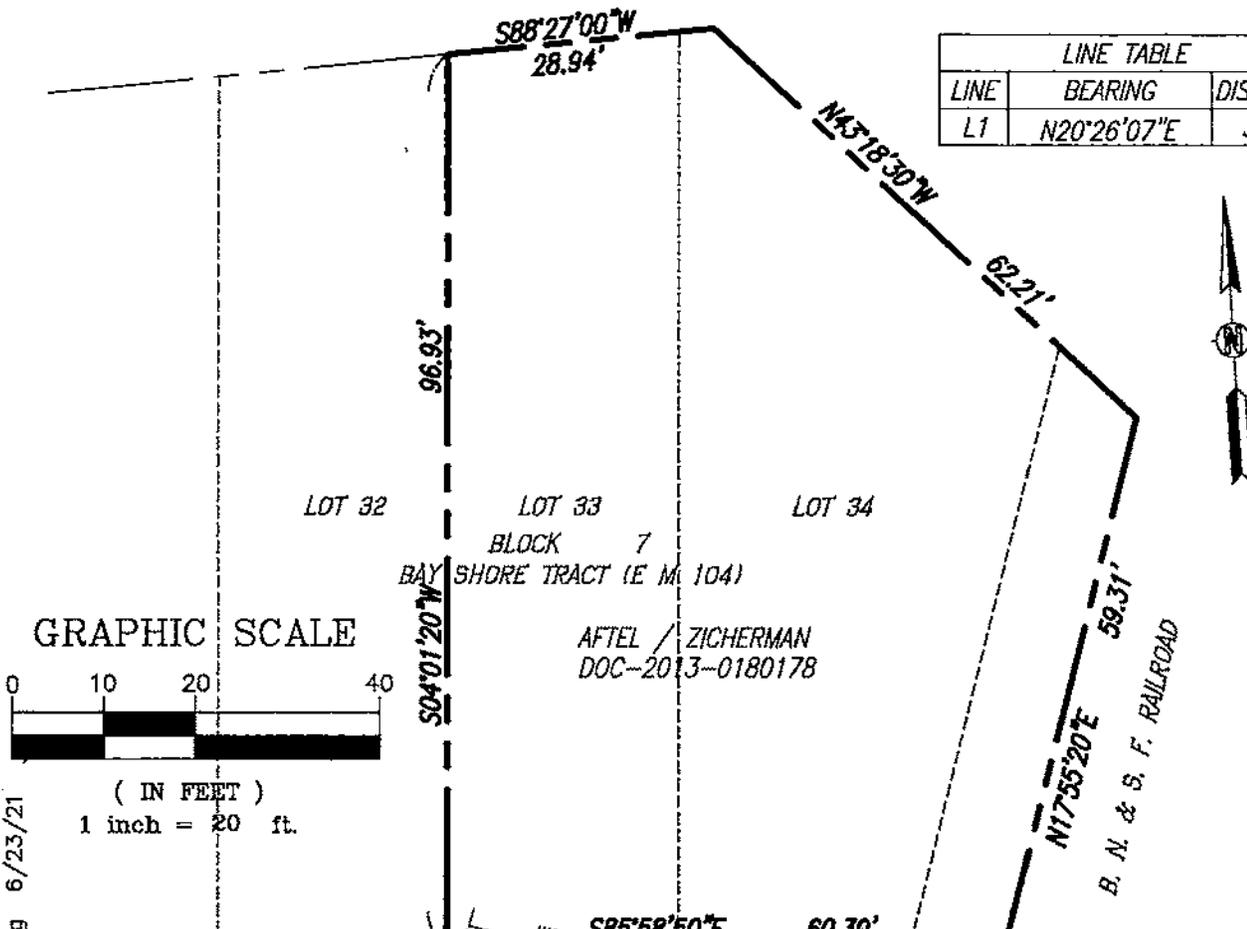


EXHIBIT A

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N20°26'07"E	3.46



P.O.B. ENCROACHMENT
AREA DESCRIPTION

WESTERN DRIVE
(50' STREET R/W)

NOTE: AREA OF ENCROACHMENT = 1,580 SQ. FT. ±

NOTE: REVISED 06/23/2021



Patrick M. Rei 06/04/2021
PATRICK M. REI DATE
CA LS 8178

EAST BAY REGIONAL PARKS DISTRICT

P:\projects\20317\DWGS\SURVEY\SURVEY.dwg 6/23/21

REFERENCE	DESCRIPTION	KISTER, SAVIO & REI, INC LAND SURVEYORS - CIVIL ENGINEERS 825 SAN PABLO AVENUE PINOLE, CA 94564	
	SURVEY OF IMPROVEMENTS ENCROACHING ON WESTERN DRIVE ADJACENT TO APN 558-012-021	PHONE: (510) 222-4020	FAX (510) 222-3719
		FOR: CHLOE AFTel	
		DATE: 6/03/2021	JOB No. 20317
		SCALE: 1" = 20'	DWG No. EXHIBIT
	RICHMOND, CALIFORNIA		

LEGAL DESCRIPTION
ENCROACHMENT AREA

REAL PROPERTY IN THE CITY OF RICHMOND, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, BEING A PORTION OF WESTERN DRIVE (FORMERLY WASHINGTON AVENUE) AS SHOWN ON THE MAP OF THE BAYSHORE TRACT, FILED MAY 5, 1902, IN BOOK E OF MAPS, PAGE 104, CONTRA COSTA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 33, BLOCK 7 OF SAID MAP OF BAYSHORE TRACT;

THENCE ALONG THE DIRECT SOUTHERLY PROLONGATION OF THE WEST LINE OF SAID LOT 33, SOUTH 04° 01' 20" WEST, 27.57 FEET;

THENCE SOUTH 74° 03' 43" EAST, 19.93 FEET;

THENCE NORTH 20° 26' 07" EAST, 3.46 FEET;

THENCE SOUTH 71° 29' 29" EAST, 21.77 FEET;

THENCE NORTH 33° 00' 44" EAST, 38.67 FEET TO THE SOUTH EAST CORNER OF PARCEL OF LAND DESCRIBED IN THE DEED TO CHLOE AFTER, A SINGLE WOMAN AND BENJAMIN J. ZICHERMAN, A SINGLE MAN AS JOINT TENANTS, RECORDED JULY 18, 2013, DOCUMENT 2013-0180178, CONTRA COSTA COUNTY RECORDS, SAID POINT BEING ON THE DIRECT EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF LOTS 33 AND 34, OF SAID BLOCK 7;

THENCE ALONG SAID EASTERLY PROLONGATION AND THE SOUTHERLY LINE OF SAID LOTS 33 AND 34, NORTH 85° 58' 50" WEST, 60.30 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 1,580 SQUARE FEET MORE OR LESS.

Patrick M. Rei

06/23/2021

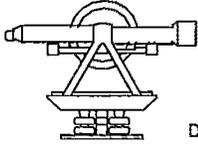
PATRICK M. REI
CA LS 8178

DATE



KISTER, SAVIO & REI INC.

LAND SURVEYORS & CIVIL ENGINEERS



MATTHEW L. REI
RCE 39863, LLS 7115
PRES - ENGINEERING

PATRICK M. REI
LLS 8178
PRES - SURVEYING

DONALD E. KISTER (1905-1969) * CHARLES J. SAVIO (1921-2006) * MICHAEL P. REI (1934-2015)

825 SAN PABLO AVENUE
PINOLE, CA 94564
PHONE (510) 222 - 4020
FAX (510) 222 - 3718
E-MAIL info@ksrinc.net

FROM		ANGLE		DIST	NORTH	EAST	TO	
=====								
ENCROACHMENT AREA								
***** START								
1	TRAV	S	4 01 20	W	27.57	4972.4979	4998.0661	2
2	TRAV	S	74 03 43	E	19.93	4967.0252	5017.2300	3
3	TRAV	N	20 26 07	E	3.46	4970.2674	5018.4381	4
4	TRAV	S	71 29 29	E	21.77	4963.3566	5039.0820	5
5	TRAV	N	33 00 44	E	38.67	4995.7835	5060.1502	6
6	TRAV	N	85 58 50	W	60.30	5000.0102	4999.9985	7
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					LAT & DEP	-0.0102	0.0015	
7	HCLOSE	S	8 29 59	E	0.01	5000.0102	4999.9985	1
					PREC = 1 TO 16609	Area = 1579.82 sq ft	0.03627 ac	

Status File: _common.LSF Stored.

Traverse Sequence Memory: _common.TSM Stored.

From: zichermandefenselaw@gmail.com
To: [City Clerk Dept User](#)
Subject: Public comments agenda item O.1 for counsel meeting on 3/7/2023
Date: Tuesday, March 7, 2023 10:44:44 AM

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Good morning,

Please see the email below originally sent to Public Works employee Yader Bermudez at his request. I would like the email to be entered as my comment on this matter.

Thank you.

Benjamin Zicherman, Esq.
Law Offices of Benjamin Zicherman
Tel: (510) 542-6227
Fax: (415) 236-6187
Bayareadefenselaw.com



From: zichermandefenselaw@gmail.com <zichermandefenselaw@gmail.com>
Sent: Saturday, February 4, 2023 12:13 PM
To: Yader_bermudez@ci.richmond.ca.us
Cc: 'Chloe Aftel' <chloe@chloeaftel.com>
Subject: Encroachment Agreement for 8 Western Drive

Good afternoon Mr. Bermudez,

I am in receipt of your letter of January 20, 2023 regarding the encroachment at 8 Western Drive. As the previous owner of 8 Western, I feel that it is important to tell you the history of this dispute as it happened.

My wife Chloe, who is copied here, and I bought 8 Western in 2013. When we purchased the property as part of a probate sale, we believed that the property in front of 8 Western was part of the parcel, and that the parcel went all the street. There were steps leading down to western where there was a driveway which could fit two cars, the mailbox as well as a place to store the trash and recycling bins for the house. This is also the only entry point for the property from Western Drive. There is only one property adjacent at 24 Belvidere, where Richard Katz and Claire Brown live. They can be generously described as eccentric. Given that they seemed strange, we bent over backwards

to have good relations with them, and we did. We went to their holiday parties, helped with their house when they were on vacation, helped them with neighborhood projects such as installing a fire hydrant. Richard often played with our then 2 year old son. When a separate neighbors tree fell and did damage, I helped them bring a small claims suit. We were always on good terms with them. In 2017 we applied for a permit to enclose the front of the house so that we could park securely there, as car break-ins did happen in the neighborhood. The permit was granted and we constructed the fence in 2017. No one said anything about the fence when it was being constructed or afterwards.

In approximately September 2020, we were contacted by an inspector for the City who told us that there had been an anonymous complaint about the fence being on city land. This was the first we had ever heard about part of the property being public land. A survey that we paid for revealed that the land where the driveway was in fact city property. Given that we had relied upon the permit in building the fence, the permitting department began working with us in securing an encroachment so that the fence could remain. This process took more than a year and a half. During that time, more and more anonymous complaints began being made, but the city could not reveal the source. We were told by city personnel that at times these complaints were multiple times a week. It is also of note that during this time, the tenor of the complaints changed. Initially, the complaints were just about the fence being on city land, but after a few months, the complaints claimed that the fence was dangerous to pedestrians. No one had ever complained about any hazard in the previous 4 years, and there had never been an accident in front of the property.

In November of 2020, Chloe had become pregnant with our second child, and 8 Western was just too small for a family of four. We began looking for a new home and readied 8 Western for sale.

We moved out in April of 2021. It is of note that Richard and Claire seemed saddened by us moving and promised to come visit us in the future. The property went into coming soon status in May of 2021. Shortly thereafter, Claire stopped in front of the property, told a potential buyer that they loved the house, but that they didn't like the fence which is why they complained to the city. When we were told, we were flabbergasted. We had never had any conflict with the neighbors, and they had certainly never brought up the fence with us. Not once had they ever voiced any concerns about safety. In fact, a few months after the initial anonymous complaint was made, I asked Richard in person if he had made the complaint. He denied making the complaint and instead blamed another neighbor, Don Lewis, who had nothing to do with it. To this day, they have never had the basic civility to discuss the fence situation with us. The cowardice of Claire and Richard is profound and cannot be understated.

It between May and August, the complaints from Richard and Claire intensified, where they were calling the permitting department and even showing up in person multiple times a week. They were so disrespectful with the staff that they were told only to deal with supervisors. At one point, Claire called a city employee in permitting a "bitch". This was of course over the phone. They also tried to have permitting employees fired. As I have said, Richard and Claire are underhanded, skullduggery and cowardly. Around this time, they also made other code violation complaints that were completely unfounded and intended only to harass us. Strangely, they expressed an interest in buying 8 Western. After we quoted them an offer, Richard showed up at our door, quite drunk, tearfully complaining that they could not buy the house as Claire told him he was not competent to manage the property. Please bear in mind that we were never anything but kind to these people. During this time, we were working diligently with the city on the encroachment. After surveys, inspections and a tremendous amount of paperwork, the encroachment was granted by the city on

July 12, 2021 and subsequently recorded. We were told by zoning and permitting personnel that there were more than a dozen identical encroachments for fences throughout Point Richmond. All of those encroachments were granted through the same process and under the same authority that our encroachment was granted.

It was at this point when the situation went from an abuse of the system by entitled neighbors to completely surreal. Shortly after the encroachment was granted, the then mayor of Richmond, Tom Butts got personally involved. He began taking pictures of the fence, and posting about it on his online "eforum." In these posts, Butts doxed us by disclosing our new address, posted pictures of my wife and then 2 year old son, and made wholesale, and I believe intentional, misrepresentations about the history of the fence and how the encroachment came to be. My favorite misrepresentation was that we built the fence to enrich ourselves during the sale, even though he knew we built the fence years before we planned to move. He also claimed that I abused my being an attorney to accomplish this. I am a criminal defense attorney and I have no experience with land use or zoning law. It was shocking. I would have been more upset, but no one outside of Point Richmond cares what Tom Butts thinks, and certainly no one reads his eforum. I decided to stay above the fray.

We also learned that from city employees that Butts was putting direct pressure on the permitting department to rescind our encroachment (and none of the others in the Point), and was trying to divert the matter to the zoning board, where one of his sons sat. We were also told that Butts was blocking many of the complaints against Claire and Richard, who had built on the same city land that we had, but without a permit. Richard also has built an archery range behind the property where he shoots compound bows and throws axes. It is incredibly dangerous, illegal and a nuisance, but Butts apparently blocked complaints about the archery range as well.

Butts repeatedly brought up our fence at city council meetings and I was told Richard appeared and slandered us with the knowing falsehoods Butts has put online. In or around October, Butts' other son Andrew who is an attorney, brought suit against the city to invalidate the encroachment. The suit repeated the falsehoods perpetuated by Butts. I expected to be able to set the record straight when I was deposed in the case. Initially, the city counsel approved funding to fight the case, but later relented and submitted on the suit. The decision was made to rescind the encroachment and allow the new owner of 8 Western to reapply. Apparently this agreement was part of some kind of political horse trade between Butts and the counsel.

That brings us to where we are now. I believe that this whole situation has been an abuse of the system from the beginning. The involvement of a mayor of a sizable city is unprecedented. We do not know why the former mayor was involved, or the nature of his entanglement with Claire and Richard, but I have never heard of him taking an interest in fence disputes or having his son bring suit against the city for a resident living in the Iron Triangle. I do not know if Mr. Butts is corrupt, but his actions certainly bear the appearance of absolute corruption and abuse of office.

It is also worth noting that the new owners have been consistently harassed by Claire and Richard, been subject to threats, and have been victims of racism since buying 8 Western.

This fence was legally permitted and built, stood for years without issue, and then was granted an encroachment after extensive investigation by the City. It should be allowed to remain. All of the above can be verified by city personnel.

Please let me know if I can provide you any documentation relating to the above, and please do not

hesitate to contact me with any questions.

Best Regards,

Benjamin Zicherman, Esq.

Law Offices of Benjamin Zicherman

Tel: (510) 542-6227

Fax: (415) 236-6187

Bayareadefenselaw.com



From: [Carlos Balladares](#)
To: [City Clerk Dept User](#)
Subject: Pubic Comments Agenda item # O.1
Date: Monday, March 6, 2023 8:41:04 PM

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

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

My wife and I walk on Western Drive frequently and enjoy Keller Beach across from this house.

We are in support of this encroachment/fence staying where it is, as it prevents blight and dumping in a beautiful section of Richmond. It prevents city land encampments which would more than likely pop up in front of it if the fence were gone - given its immediate proximity to Keller Beach's public toilet and shower. From there, the encampments could likely proliferate up Western and Bishop and on throughout Point Richmond. It's happening now as it is off of Dornan Drive, and it's only growing.

We have followed along with what has occurred here. Honestly, I am disappointed that the city did not grandfather this encroachment. The new encroachment ordinance should apply to new requests moving forward; it should not have been imposed on this house, as you already approved an encroachment in 2021. It is unjust to the new owners regardless of how folks tried to spin it. If you made them reapply, all other encroachment holders should also have to reapply under the new rules. I am requesting you also take a look at all property lines and possible encroachments on Western, Bishop, Belvedere, and Crest, if not throughout all of Point Richmond, as there are likely many fences, signs, objects, etc., that are encroaching on city land that is not permitted to. If you impose this on one property, you must equally do it for all of them.

Many of us have been discussing and are curious about why it took so long for Clair Brown to complain about it. The fence has been there since 2018, yet there were no complaints to the City or Code Enforcement until three years later. All that time to call the City, yet no neighbors ever did. Why now? What made it safe from 2018 - 2020 but "unsafe" in 2021 when a new family moved in? What if the city approves and signs off on a new deck or room addition for a resident? Then three years later, a neighbor complains. Will the city make them tear it out and lose the tens or

hundreds of thousands of dollars they invested in their improvements based on the city's approval; because a neighbor decides years later that they have an issue? That would be wrong and unjust, as in this situation.

Again, please leave this alone as it betters the neighborhood and community. We would like to see additional fencing along the remainder of Western across from Keller to protect pedestrians from the numerous dangerous items in the city right of way to the left of this house. We request the Mayor and City Council members focus their valuable time and attention on the real issues our great city faces daily.

Respectfully,

Carlos Balladares

From: [Cecil Calban](#)
To: [City Clerk Dept User](#); [Doria Robinson](#); [Gayle McLaughlin](#); [Claudia Jimenez](#); [Eduardo Martinez](#); [Melvin Willis](#); [Robert Armijo](#); [Soheila Bana](#)
Subject: Fwd: Agenda Item O.1 Encroachment 8 Western Drive Council meeting March 7 in support of issuing an encroachment
Date: Tuesday, March 7, 2023 3:12:31 PM

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From: C Calban

Date: March 7, 2023 at 12:54:03 PM PST

To: Daniel Chavarria <Daniel_Chavarria@ci.richmond.ca.us>, Lina Velasco <Lina_Velasco@ci.richmond.ca.us>, robert_armijo@ci.richmond.ca.us

Cc: Cesar Zepeda <Cesar_Zepeda@ci.richmond.ca.us>, eduardo_martinez@ci.richmond.ca.us, Doria_Robinson@ci.richmond.ca.us, melvin_willis@ci.richmond.ca.us, Gayle_McLaughlin@ci.richmond.ca.us, soheila_Bana@ci.richmond.ca.us, claudia_jimenez@ci.richmond.ca.us, City Clerk Dept User <CityClerkDept@ci.richmond.ca.us>

Subject: Agenda Item O.1 Encroachment 8 Western Drive Council meeting March 7 in support of issuing an encroachment

Dear City Staff, Mayor Eduardo and Council members,

Please, please, please do the right thing, and let that poor woman at 8 Western renew her encroachment permit.

How horrible for a working class family to scrimp and save, buy a house, do all their homework- And then find out that their life is torn up, their property devalued- And make them spend thousands and thousands and thousands of dollars in legal fees and hiring professional experts.

Where is the social justice in that?

If the city staff in the planning department messed this up - Why don't you dock their salaries for the tens of thousands of dollars that taxpayers might be on the hook?

My understanding is that over 25 million dollars of my taxpayer money has gone to lawsuits in the last five years or so. Why does this keep happening?

If it was done wrong or done, right- It's done- Please leave that poor family alone and see if you can avoid another expensive lawsuit.

Lastly, my family has lived in my house for 60 years and I have been up and down Western Drive and Belvedere a thousand times.

It's always been dangerous, and that lady's driveway is the only place a pedestrian can safely step off the road. Where the heck are you when that guy put all those giant boulders and metal monstrosities on the roadside?

Please do the right thing and let sleeping dogs lie .

Cecil Calban

--

Cecil Calban

From: [Pamela Christian](#)
To: [City Clerk Dept User](#)
Subject: FW: Mr. Milani's false rendition of the history and reasons for the 8 Western Fence
Date: Friday, March 3, 2023 1:57:10 PM

From: Clair Brown <clairbrown@gmail.com>

Sent: Friday, March 3, 2023 11:20 AM

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>; Cesar Zepeda <Cesar_Zepeda@ci.richmond.ca.us>; Dave Aleshire <daleshire@awattorneys.com>; Pamela Christian <pamela_christian@ci.richmond.ca.us>

Cc: Don Lewis <youcangetdon@gmail.com>; Dr Lesli Handmacher <drlesli@eyeseeyou.net>; Datenkale <datenkale@netscape.net>; Julia BADER <baderj@berkeley.edu>; Rosemary Corbin <rdcorbin@sbcglobal.net>; Rodrick Satre <rdsatre@live.com>; jonathan livingston <jlivingston7096@gmail.com>; Sandra Beyaert: <sbeyaert1@gmail.com>; Kenneth Washburn <kenwas@darkhorsetrading.com>; Julie Nestingen <jnestingen@gmail.com>; Donna Stoneham <donna@positiveimpactllc.com>; Tom Piazza (tompiazza99@gmail.com) <tompiazza99@gmail.com>

Subject: Mr. Milani's false rendition of the history and reasons for the 8 Western Fence

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

Dear City Council Members and City Attorney:

I am writing to summarize **a phone conversation that Don Lewis, a neighbor on Western Drive, had with Mr. Milani**, who filed the application for an Encroachment agreement for the 8 Western fence that currently encloses almost 1600 sq ft of the public right of way.

Don Lewis is unable to co-sign this message with me, because he suffered an unexpected, life-threatening health crisis a week ago and remains in intensive care. Our neighborhood is focused on helping care for Don's wife and family, who have gathered to be with Don at the hospital. Don has been our Community Emergency Response Team Rep [REACT-CERT] for many years, and we have relied on Don, along with Richard Katz, to help keep our neighborhood safe, and to help people when they needed an extra hand.

So with a heavy heart, I am writing this message by myself, and cc the neighbors who agree with Don that the City Council should deny the 8 Western encroachment application.

On Feb 14, Don made a phone call to Mr. Milani to ask about the encroaching fence because Don was concerned about the public safety hazard caused by the fence along 8 Western Drive. Don was visiting us when Mr. Milani returned his call, and so I [and my husband] could hear the call. I took some notes, and Don and I went over my notes when the call ended.

Mr. Milani had erroneous information about important basic facts [I am using his wording to the

extent possible]:

1) Milani stated that the current owner Ortiz had to build the fence in order to protect the improvements made on the city property over 10 to 12 years ago. The only problem was that the neighbors objected to the fence.

The facts: the previous owner built the fence in 2017 without a permit. The large enclosure of public land provided an enclosed private parking space in what had previously been a "no parking" zone for the public to use to load/unload cars then visiting Keller Beach and to enjoy while walking along Western on the open space. The owner also started to landscape the city property that had become his front yard, as he prepared to sell his Richmond house and move to Orinda.

2) Milani stated that the owners received an encroachment permit 10-12 years ago for a retaining wall and improvements.

The Facts: No such permit is listed on the public records.

3) Milani stated that the owners had made "many improvements to the public street and on the right-of-way on Western on vacant land that was not being used". At one point, Milani called this "improvements on excess land".

The Facts: the main "improvements" are a gravel space for private parking that is very unsafe when the car is backing out onto the narrow Western Dr with a blind hill so that on-coming cars cannot see a car in the middle of the street while the driver gets out to close the sliding gate and lock it. The owners also put up a large planter that is 5' tall against the fence on the inside of the encroaching fence. The enclosed public land did not require a retaining wall, and it was used by pedestrians as part of the walkway along Western Dr. This land was not "excess"; it was being used constantly by the public.

As Don Lewis has said to Clair and others, "Lots of people were enjoying this public land. Also most of the homeowners along Western take pride in planting and maintaining the right-of-way for the public to enjoy as they walk along with kids and dogs." Don also pointed out that now only two people can enjoy their landscaping, while the public faces a public safety hazard trying to walk along 8 Western Drive.

4) Milani referred to the homeless on the beach, and mentioned the need for safety.

The Facts: Our neighborhood enjoys the families visiting the beach. Most property owners have fences along their property lines. A fence along the property line at 8 Western would provide any protection needed.

Don also pointed out that the neighbors know about the safety hazard caused by the fence and find it stressful to walk by and they are cautious. However the public visiting Keller Beach doesn't know about the safety hazard, and we see kids almost hit by cars while going to and from Keller Beach. This has the neighbors especially upset and concerned.

5) Milani stated that when the owners met with Joe Leach, he stated that the fence did not cause a safety problem and there were no impediments on the Road.

The facts: Joe Leach did state this also to the 13 concerned neighbors who met with him in front of 8 Western, sitting on the guardrail. The neighbors disagreed with him, pointed out the blind hill and the narrow street with no public right-of-way resulted in no way for pedestrians to safely walk by. One neighbor wondered if there was any money changing hands. Another neighbor asked Leach

what was the benefit to the public of the encroaching fence, and he said, "None. Letting homeowners enclose public land does not require that the public benefit. Allowing people to enclose public land for their own use seems to be a tradition in Point Richmond." When he was asked to point out other examples of homeowners taking over 1600 sq ft of public land and causing a safety hazard, he said he didn't have examples handy, but we could go look them up on public records.

As you can see, Mr. Milani does not have the facts straight, including who built the fence and when, the lack of any permits, the reason for the fence being built, and how the city benefits from the fence.

We know this story with all these falsehoods is being repeated. We ask the City Council to review the facts and the history, and deny the application for the 8 Western encroachment for the safety and wellbeing of Richmond's residents.

Sincerely,
Clair Brown and Don Lewis [nearby neighbors]

From: [Clair Brown](#)
To: [City Clerk Dept User](#)
Subject: Fwd: Public Comments - Agenda Item O.1 Encroachment 8 Western Drive, City Council meeting March 7, 2023
Date: Monday, March 6, 2023 12:37:44 PM

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

From: Clair Brown <clairbrown@gmail.com>
Date: Mon, Mar 6, 2023 at 11:35 AM
Subject: Public Comments - Agenda Item O.1 Encroachment 8 Western Drive, City Council meeting March 7, 2023
To: Soheila Bana <soheila_bana@ci.richmond.ca.us>, Claudia Jimenez <claudia_jimenez@ci.richmond.ca.us>, Eduardo Martinez <eduardo_martinez@ci.richmond.ca.us>, Gayle McLaughlin <gayle_mclaughlin@ci.richmond.ca.us>, Doria Robinson <doria_robinson@ci.richmond.ca.us>, Melvin Willis <melvin_willis@ci.richmond.ca.us>, Cesar Zepeda <cesar_zepeda@ci.richmond.ca.us>, <cityclerkdept@ci.richmond.ca.us>

Dear City Council Members,

Please do not approve the Encroachment Agreement for 8 Western Drive.

As I have written to you before, the encroachment upon a large tract of heavily used public pedestrian right-of-way at 8 Western is causing a public hazard for pedestrians and vehicles. The stockade fence has closed off the public land so that only the owners can enjoy it. The encroachment agreement supported by the City Attorney and staff will make this 1600 sq ft into private property forever, with nothing in return for the City of Richmond and its people. The people are left with a public hazard and no safe walkway, or place to load and unload cars for going to the beach, or even stop to enjoy watching Keller Beach and the Bay. Vehicular traffic has safety problems because of the blind hill and the narrow street with no shoulders.

Neighbors have sent emails to the City staff with information about the 8 Western illegal fence that is causing the safety problems and also concerns that public property that was enjoyed by all has become private property for the benefit of the owners only.

Here is a Google Doc that contains much of the correspondence between the City Staff and neighbors since 2020:

https://docs.google.com/document/d/1VUEpn844v2FuaBtxE_uGX4SM0tOGEDp5hwg1YptATJ8/

This is a long document because there is a long history of the illegal encroaching fence at 8 Western. There has never been a permit issued for the 6' fence that encloses the public right-of-way. When an official complaint was filed, the City Staff stonewalled and did not take any action until a lawsuit was filed.

The documentation shows that the City Staff is giving you bad advice to: "ADOPT a resolution to approve an Encroachment Agreement Application for private landowner fence encroachment into the unimproved public right-of-way at 8 Western Drive; and DIRECT City staff to enter into an Encroachment Agreement regarding same to be recorded on the landowner's property title."

The staff reports makes false statements, has not followed the Richmond Code, and has omitted and ignored important facts. In giving away the public land to the owners of 8 Western with nothing in return, the staff report is also not enforcing the state constitution.

I am unable to be present at the public hearing to make comments on Tuesday evening because of health problems. This is also true of many of the neighbors, because many of us are seniors. Please read our messages carefully, and DENY the 8 Western Encroachment application.

Sincerely,
Clair Brown
20 Belvedere, Richmond

--

May we heal the earth as we heal ourselves, for the benefit of all.

Projects: <https://irle.berkeley.edu/center-for-work-technology-and-society/>

My book: *Buddhist Economics: an enlightened approach to the dismal science*, Bloomsbury Press, 2017.

Book trailer (2 min): <https://youtu.be/88RX5A2iezs>

<http://buddhisteconomics.net/>

Follow on <https://twitter.com/BrownClair>

--

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<http://buddhisteconomics.net/>

Follow on <https://twitter.com/BrownClair>

From: [Donna Stoneham](#)
To: [Julie Nestingen](#)
Cc: [Soheila Bana](#); [Claudia Jimenez](#); [Eduardo Martinez](#); [Gayle McLaughlin](#); [Doria Robinson](#); [Melvin Willis](#); [Cesar Zepeda](#); [City Clerk Dept User](#)
Subject: Re: Public Comments - Agenda Item O.1 Encroachment 8 Western Drive, City Council meeting March 7, 2023
Date: Tuesday, March 7, 2023 12:10:50 PM

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Dear City Council Members,

My wife, Julie Nestingen, sent her email to you re: approval of encroachments at 8 Western Ave. I am reposting it here as they are my sentiments as well as an owner on Belvedere Ave who frequently uses Western Ave, to walk our dogs.

Thank you for your consideration in this matter.

Dear City Council Members,

I am very concerned about the precedence of approving Encroachment Agreements by the city. I like to think that our elected officials are there to protect the public from actions that benefit one at the expense of the community. We can't have a city where anyone can decide to usurp public lands for their own gain without reproach.

The Encroachment Agreement for 8 Western is particularly risky as it is a very well-traveled route for pedestrians strolling through our neighborhoods, people going to our Keller Beach and the park, and is often used as a way for cars to circumvent getting stuck behind the trains crossing the downtown tracks. Bluntly speaking, it is a busy road for all modes of transportation.

There is very little room for people walking, cyclists, dog walkers, people with mobility challenges traveling in by wheelchair, etc to get out of the way of two-way traffic. Cars leaving the tunnel turn right onto Western at crazy speeds and their line of vision is obstructed by the hill and blind curve ahead. The fence coming over to the ROW adds to the treacherous conditions.

I am equally concerned about the upcoming years of work on the sewer main along Western Drive, which will crowd this narrow street even more, making it more precarious than ever to walk or bike along it. Walling off any public land along Western Drive at this corner puts the public at risk.

I don't fault the new owners and feel bad that they are caught in the greedy land grab of the previous owners. However, public safety cannot be overlooked for the benefit of one.

Thank you for listening to the voices of the residents when making this decision.

Best regards,
Julie Nestingen

[Donna Stoneham](#)

On Tue, Mar 7, 2023 at 11:33 AM Julie Nestingen <jnestingen@gmail.com> wrote:

Dear City Council Members,

I am very concerned about the precedence of approving Encroachment Agreements by the city. I like to think that our elected officials are there to protect the public from actions that benefit one at the expense of the community. We can't have a city where anyone can decide to usurp public lands for their own gain without reproach.

The Encroachment Agreement for 8 Western is particularly risky as it is a very well-traveled route for pedestrians strolling through our neighborhoods, people going to our Keller Beach and the park, and is often used as a way for cars to circumvent getting stuck behind the trains crossing the downtown tracks. Bluntly speaking, it is a busy road for all modes of transportation.

There is very little room for people walking, cyclists, dog walkers, people with mobility challenges traveling in by wheelchair, etc to get out of the way of two-way traffic. Cars leaving the tunnel turn right onto Western at crazy speeds and their line of vision is obstructed by the hill and blind curve ahead. The fence coming over to the ROW adds to the treacherous conditions.

I am equally concerned about the upcoming years of work on the sewer main along Western Drive, which will crowd this narrow street even more, making it more precarious than ever to walk or bike along it. Walling off any public land along Western Drive at this corner puts the public at risk.

I don't fault the new owners and feel bad that they are caught in the greedy land grab of the previous owners. However, public safety cannot be overlooked for the benefit of one.

Thank you for listening to the voices of the residents when making this decision.

Best regards,
Julie Nestingen

From: [Pamela Christian](#)
To: [Sabrina Lundy](#)
Subject: FW: Email Message in Support of 8 Western Encroachment
Date: Wednesday, March 1, 2023 3:59:05 PM
Attachments: [IMG_1602.HEIC](#)

From: Accounts Payable <ap@hayessurgery.com>
Sent: Tuesday, February 28, 2023 4:44 PM
To: Pamela Christian <pamela_christian@ci.richmond.ca.us>; Eduardo Martinez <Eduardo_Martinez@ci.richmond.ca.us>; Gayle McLaughlin <Gayle_McLaughlin@ci.richmond.ca.us>; Cesar Zepeda <Cesar_Zepeda@ci.richmond.ca.us>; Melvin Willis <melvin_willis@ci.richmond.ca.us>; Claudia Jimenez <Claudia_Jimenez@ci.richmond.ca.us>; Doria Robinson <Doria_Robinson@ci.richmond.ca.us>
Subject: Email Message in Support of 8 Western Encroachment

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Dear Ms. Christian, Mayor Martinez, Vice Mayor McLaughlin and City Council Members:

I am sending this email in support of maintaining the encroachment at 8 Western Drive, which I believe is on the agenda for your next meeting.

As an avid walker and user of Keller Beach across the street from the subject property I have become aware of the issue going on in regards to it. I am in favor of allowing the property owners to maintain this encroachment and think it's actually a win/win for local residents. There is ample room to walk in front of the house (although, as with many small communities, so many folks in Point Richmond don't always use their sidewalks). It keeps the liability of that area off of the City and, it prevents people in those haul trucks from dumping there (which is becoming an unsightly problem in the area.) As an aside—and maybe not a small one—maintaining the encroachment and fence would obviously help give the owners peace of mind from what I understand have been attacks made against them since this issue arose as a consequence of their neighbors filing a lawsuit against the City.

What has really surprised me and other people I have talked to, is what appears to be the obvious hypocrisy in this situation. I must assume you have been to 8 Western and have seen the house/property to the left of it? On what I understand is also a City right-of-way/encroachment, there are pieces of glass, wood, rusted metal and enormous chained up tree trunks (axe targets I was told). If one of those broke free, it could roll off and seriously harm a pedestrian or a vehicle. Also, anyone could easily trip and hurt themselves on one of the metal sculptures. Perhaps those owners should also put a fence up along their stretch of Western to protect passersby from all their items? My understanding is there is no call to have that property owner's encroachment reclaimed or rescinded.

When you really look around the neighborhood it appears that almost everyone's property is encroaching in some way, shape or form. Is everyone now going to have to move their fences or carports because of this? I may not fully understand all the details of what the complete issue is here, but from a "reasonable person" perspective, it just doesn't seem right for the City to target one property unless all the houses in the same community are to be held to the same standard. Something doesn't feel quite right about that. If you are rescinding one encroachment you should rescind them all. But I strongly hope you do not. I think the City has more important things to focus their energy on than fighting over this issue. The City originally approved the encroachment and it actually beautifies and keeps clean what was once an unsightly spot.

Thank you for your attention to my opinion,
Louise M. Gori

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From: [Pamela Christian](#)
To: [Sabrina Lundy](#); [Jasuara Castaneda](#); [Ursula Deloa](#)
Subject: FW: Deny the Encroachment request on 8 Wester Drive
Date: Sunday, March 5, 2023 6:27:12 PM

From: Erica Milsom <ericaohERICA@gmail.com>
Sent: Saturday, March 4, 2023 2:37 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>; Cesar Zepeda <Cesar_Zepeda@ci.richmond.ca.us>
Cc: Pamela Christian <pamela_christian@ci.richmond.ca.us>
Subject: Deny the Encroachment request on 8 Wester Drive

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

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Hi there Mr. Mayor and members of the council,
I don't know if y'all remember those crazy days of the early pandemic when EVERYONE was walking in Richmond. Families, old people, young people, me. My dog. Well - it changed a lot about my relationship to the city, and where I felt like I had the time and right to go hang out. And Miller Know park and beach were treasured places that I loved to visit. Parking close to the beach was tough, and that's okay, because it's a problem we shared in a friendly way. As citizens and neighbors.

And then I see this application for a personal 2 spot parking encroachment on an already crowded and busy beach. **8 Western Drive**. ONE that the privileged homeowners just decided to build without permits or applications. They decided they could JUST TAKE THE STREET as parking for themselves. And tell the rest of us that it's a no-parking zone.

What?

This is a taxpayer funded location that includes - an important beach (that they can enjoy as often as they like) but the rest of us may need to drive to.

A narrow street that should not be modified by any homeowner who thinks it's their right to do so.

And an issue with receiving amazon deliveries?

WHAT?

As elected officials for the entire community, not just the homeowners on 8 western drive, I believe it's your job to deny this encroachment and return the parking spaces to public use.

Thanks,

Erica Milsom

415-595-3267

From: [Felicia Layser Robertson](#)
To: [City Clerk Dept User](#)
Cc: [Eduardo Martinez](#); [Gayle McLaughlin](#); [Cesar Zepeda](#); [Melvin Willis](#); [Claudia Jimenez](#); [Doria Robinson](#); [Soheila Bana](#)
Subject: Public Comments - Agenda Item #O.1
Date: Monday, March 6, 2023 7:03:10 AM

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Dear Mayor Martinez and Council Members,

I am writing to you to urge you to adopt the resolution to approve an Encroachment Agreement Application for the private landowner at 8 Western Drive.

As a Richmond homeowner and resident, I want to see your time spent on public safety and enabling homeowners to increase the value of their homes which thereby brings up the value of their neighbors' property, increasing property taxes for the betterment of our greater community.

8 Western Drive is across the street from Keller Beach, a public gem we should all be able to enjoy safely - I love to take my dog for walks along the Bay and I want to know we're safe while enjoying this activity. The fencing brings up the value of this property and also acts as a preventative to the houseless setting up camp, much like we saw at Rydin Road, and in other areas accessible to water all around the greater Bay Area. Pt. Isabel used to be a spot for us to enjoy walks in the fresh air, until it became a challenge to access it. As you are well aware, Rydin Road was cleared out last year and fencing now exists along the length of it in what I may assume as a preventative from the houseless returning. Pt. Isabel is once again accessible.

If you walk or drive along Western Drive, you will see 8 Western Drive stands out in how well it is kept. At a time when insurance companies are reducing the policies they will write in California, we want to see homeowners who care for their homes and property and who voluntarily abate possible wildfire hazards, such as brush, tress and bushes. Rather than detract from a home, reduce the value and ask homeowners to lose equity and the value they received when they purchased their property, we should be asking our homeowners to keep up their homes and landscaping for the safety of all in our neighborhoods. I believe you are setting dangerous precedent if you take away value from a home after it has been purchased by a new homeowner as well as 'undoing' the actions of our city departments.

I am not sure how this item became agendized, but as your constituent, I would ask that you promptly approve this application and move on to the work that we want you

to focus on - getting our houseless they support they need to get them off the streets and into an environment that promotes their health, safety and wellbeing and reducing crime that makes many of our streets truly unsafe.

Thank you for your service - Richmond has a rich and robust history - let's build it back up to the gem we all know it is capable of being. Thank you for taking the time to hear my voice.

In Gratitude,
Felicia Robertson

From: [Jeff Ritterman](#)
To: [Soheila Bana](#); [Claudia Jimenez](#); [Eduardo Martinez](#); [Gayle McLaughlin](#); [Doria Robinson](#); [Melvin Willis](#); [Cesar Zepeda](#); [City Clerk Dept User](#)
Subject: Public Comments Agenda Item 0.1 Encroachment 8 Western Drive.
Date: Tuesday, March 7, 2023 3:55:14 PM

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Dear City Council members and mayor,

I urge you to not approve the Encroachment Agreement for 8 Western Drive. First of all it basically amounts to theft of city property and is a dangerous precedent. How can the city permit public land to be walled off for private use especially without the consent of the neighbors.

Secondly it is opposed by many in the neighborhood. Such a project should only be done with the approval of those in the neighborhood.

Thirdly it is possibly a danger to pedestrians and others.

Respectfully,
Jeff Ritterman, MD
former city councilmember
Human Rights Commissioner

From: [Julie Nestingen](#)
To: [Soheila Bana](#); [Claudia Jimenez](#); [Eduardo Martinez](#); [Gayle McLaughlin](#); [Doria Robinson](#); [Melvin Willis](#); [Cesar Zepeda](#); [City Clerk Dept User](#)
Subject: Public Comments - Agenda Item O.1 Encroachment 8 Western Drive, City Council meeting March 7, 2023
Date: Tuesday, March 7, 2023 11:33:22 AM

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Dear City Council Members,

I am very concerned about the precedence of approving Encroachment Agreements by the city. I like to think that our elected officials are there to protect the public from actions that benefit one at the expense of the community. We can't have a city where anyone can decide to usurp public lands for their own gain without reproach.

The Encroachment Agreement for 8 Western is particularly risky as it is a very well-traveled route for pedestrians strolling through our neighborhoods, people going to our Keller Beach and the park, and is often used as a way for cars to circumvent getting stuck behind the trains crossing the downtown tracks. Bluntly speaking, it is a busy road for all modes of transportation.

There is very little room for people walking, cyclists, dog walkers, people with mobility challenges traveling in by wheelchair, etc to get out of the way of two-way traffic. Cars leaving the tunnel turn right onto Western at crazy speeds and their line of vision is obstructed by the hill and blind curve ahead. The fence coming over to the ROW adds to the treacherous conditions.

I am equally concerned about the upcoming years of work on the sewer main along Western Drive, which will crowd this narrow street even more, making it more precarious than ever to walk or bike along it. Walling off any public land along Western Drive at this corner puts the public at risk.

I don't fault the new owners and feel bad that they are caught in the greedy land grab of the previous owners. However, public safety cannot be overlooked for the benefit of one.

Thank you for listening to the voices of the residents when making this decision.

Best regards,
Julie Nestingen

From: [Karen Veitch](#)
To: [City Clerk Dept User](#); [Pamela Christian](#)
Cc: [Eduardo Martinez](#); [Sohelia Bana@ci.richmond.ca.us](mailto:Sohelia_Bana@ci.richmond.ca.us); [Gayle McLaughlin](#); [Claudia Jimenez](#); [Doria Robinson](#); [Melvin Willis](#); [Cesar Zepeda](#)
Subject: Public comments - Agenda item # O.1
Date: Tuesday, March 7, 2023 11:22:35 AM

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Dear Mr. Mayor, Vice Mayor and City Council,
I am writing to encourage you to maintain the fence at 8 Western Drive. The fence has been a win/win for the city for the past 5 years in that it has made the street look so much nicer and taken liability off of the city for what was once an easy spot for people to do drugs and to dump. There is clearly no safety concern as it has now been documented by three separate engineers as such. Additionally, it will hopefully protect this family from further hate-based crimes.

Leave well enough alone and please move on to the issues affecting the majority of your constituents.

Sincerely,
Karen Wilson

From: [Pamela Christian](#)
To: [City Clerk Dept User](#)
Subject: FW: 8 Western Drive-Request for Denial
Date: Friday, March 3, 2023 4:34:10 PM

From: kwatson@royalancestry.org <kwatson@royalancestry.org>
Sent: Friday, March 3, 2023 4:34 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>; Cesar Zepeda <Cesar_Zepeda@ci.richmond.ca.us>
Cc: Pamela Christian <pamela_christian@ci.richmond.ca.us>
Subject: 8 Western Drive-Request for Denial

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Richmond City Council,

As a resident of Richmond, I request that the City Council deny the requested encroachment agreement which has been in dispute for years. Please put this issue to rest by your denial for the following reasons:

The proposed encroachment is simply a grab of public property by a private property owner which has no support at all for this in the surrounding neighborhood and community.

Since there is no clear public benefit for transferring the use of public right-of-way to a private landowner, the request should be denied.

The purpose of the request is to clean up illegal fencing of public property to annex public property for the purpose of increasing the property square footage. Instead of granting the encroachment, require the homeowner to restore the property to its original size by removing the fence.

Best Regards,

Kathy Watson
510-234-1776
kwatson@royalancestry.org

From: [Pamela Christian](#)
To: [Sabrina Lundy](#); [Ursula Deloa](#); [Jasuara Castaneda](#)
Subject: FW: 8 Western --plus
Date: Sunday, March 5, 2023 6:24:59 PM

From: Margi Cellucci <margicellucci@comcast.net>
Sent: Saturday, March 4, 2023 10:35 AM
To: Pamela Christian <pamela_christian@ci.richmond.ca.us>
Subject: 8 Western --plus

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

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Please ADOPT a resolution to approve an Encroachment Agreement Application for private landowner fence encroachment into the unimproved public right-of-way at 8 Western Drive and for others going forward.

Thank You

~~~~~  
Margi Cellucci  
BayView Realty  
(510) 685-2018 (mobile)  
(510) 237-0101 (Land Line)  
[MargiCellucci@comcast.net](mailto:MargiCellucci@comcast.net)  
BREr00894024

**From:** [Margi Sullivan](#)  
**To:** [Margi Sullivan](#)  
**Cc:** [Daniel Chavarria](#); [Robert Armijo](#); [Dave Aleshire](#); [Cesar Zepeda](#); [Doria Robinson](#); [Melvin Willis](#); [Gayle McLaughlin](#); [Eduardo Martinez](#); [Sobeila Bana](#); [Claudia Jimenez](#); [City Clerk Dept User](#)  
**Subject:** Agenda Item O.1 Encroachment 8 Western Drive  
**Date:** Tuesday, March 7, 2023 12:56:05 PM

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Dear Director Chavarria, Deputy Director Armijo, and City Attorney Aleshire:

The LUDRC and PRNC are respectfully requesting that the City delay the Public Hearing to consider approval of an encroachment agreement application for 8 Western Drive, currently scheduled for the March 7, 2023, City Council meeting and revisit the fencing project at 130 East Scenic Avenue.

Since the PRNC and LUDRC did not receive the required written notice (see footnote, Ordinance 09-22) on either of these projects, we are respectfully requesting proper notification to allow all entities adequate time to perform appropriate community outreach, gather input, take a vote, and submit a summary of written advisory comments for City Staff and the City Council to consider.

The City Council adopted Ordinance 09-22 on June 28, 2022, which amended Richmond Municipal Code pertaining to encroachments and easements (<https://www.ci.richmond.ca.us/2534/Street-Cut-Prohibition>).

12.30.110 - Notice requirements.

(a) All encroachment permits and license (agreements) shall require notice as follows:

(1) Applications. For applications that propose an aboveground encroachment, City Engineer shall provide written notice by first class mail to occupants and to owners (as shown on the County Assessor's latest tax roll) of properties located within 300 feet of the proposed encroachment, and to the neighborhood council and any homeowners' association in the neighborhood of the proposed encroachment, advising of the filing of an application for approval of an encroachment into the ROW, describing the proposed encroachment and its location, and providing an opportunity to submit written comments regarding the application to the City Engineer within 15 days from the date of the letter and prior to the City Engineer's action on the application. Notwithstanding the foregoing, no notice shall be required for any application limited to installation of utility poles, anchors, or small cabinets less than four cubic feet in size or for any underground excavations or related work.

Margi Sullivan

**From:** [Pamela Christian](#)  
**To:** [City Clerk Dept User](#)  
**Subject:** FW: Fence at 8 Western  
**Date:** Friday, March 3, 2023 12:19:32 PM

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**From:** mindy@messageframer.com <mindy@messageframer.com>  
**Sent:** Thursday, March 2, 2023 1:55 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>; Doria Robinson <Doria\_Robinson@ci.richmond.ca.us>; Soheila Bana <Soheila\_Bana@ci.richmond.ca.us>; Cesar Zepeda <Cesar\_Zepeda@ci.richmond.ca.us>; Gayle McLaughlin <Gayle\_McLaughlin@ci.richmond.ca.us>  
**Cc:** Pamela Christian <pamela\_christian@ci.richmond.ca.us>  
**Subject:** Fence at 8 Western

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Dear Mayor Martinez and City Councilmembers:

I urge you to allow the homeowners/residents at 8 Western Drive to keep their fence.

For years, I've regularly walked past 8 Western Drive with my dog. I never thought about the fence until noticing hate speech/racial slurs posted on it. One said "No Western Wetbacks" and months earlier another said "Go Away PACO!"

Then Tom Butt's email referred to a "land grab" and illegal fence. I am not sure of the fine print of the initial ordinance, agreements, etc., but immediately, upon recalling the hate speech written on an encroachment notice and another, a cartoon of a Mexican, I thought this was probably about more than a fence. I sought more information.

The owners are Latinx. I'm fuzzy on the all of the historic details, but have been told that prior to buying the house, they checked everything out and were told the prior owners sought and received permits. The fence was permitted, no one complained until years later after the fence was built. After this the City approved an encroachment agreement. Then, when threatened with a lawsuit that they didn't want to spend money on, the city rescinded the original encroachment approval, and asked the new owners to reapply for it under a new encroachment ordinance that was created.

I don't want to get lost in the weeds, but the hate speech concerns me. I certainly understand why the people who live there would want a barrier around their property for protection

against further hate-based actions.

Again, please allow homeowners at 8 Western to keep their fence.

Thank you.

Mindy Pines  
25 Idaho St  
Richmond CA 94801

**From:** [Pamela Christian](#)  
**To:** [Sabrina Lundy](#); [Ursula Deloa](#); [Jasuara Castaneda](#)  
**Subject:** FW: Agenda Item X.3 - Encroachment Permit Application for 8 Western Drive  
**Date:** Sunday, March 5, 2023 6:24:05 PM

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**From:** pat <patwork@gmail.com>  
**Sent:** Saturday, March 4, 2023 12:54 AM  
**To:** Eduardo Martinez <Eduardo\_Martinez@ci.richmond.ca.us>; Gayle McLaughlin <Gayle\_McLaughlin@ci.richmond.ca.us>; Cesar Zepeda <Cesar\_Zepeda@ci.richmond.ca.us>; Melvin Willis <melvin\_willis@ci.richmond.ca.us>; Claudia Jimenez <Claudia\_Jimenez@ci.richmond.ca.us>; Doria Robinson <Doria\_Robinson@ci.richmond.ca.us>; Pamela Christian <pamela\_christian@ci.richmond.ca.us>  
**Subject:** Agenda Item X.3 - Encroachment Permit Application for 8 Western Drive

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Dear Richmond City Council,

One thing I love most about my Point Richmond neighborhood is walking dogs around its lanes and down to Keller Beach. It's a short walk I do all the time while regularly dog sitting for neighbors. It's a fantastic way to meet people who need help, especially when they are newly moved in, such as the Ortiz family of 8 Western Drive across from Keller Beach.

Today I'm writing in support of the Ortiz family, who bought the house at 8 Western Drive in 2021, and have not gotten a warm welcome for a sad reason. A technical property dispute has blown up into a politicized power issue that turns their welfare into collateral damage. They inherited a tangle behind what looked like a smooth sale, and it shouldn't have gone as far as police calls about racist harassment they are receiving.

That's my opinion after reviewing both sides of the technical property dispute, and the larger moral issue of how to solve problems as a neighborhood. I'm just a local dog walker, but also familiar with legal disputes and speaking up on behalf of fairness even when it's inconvenient. It would be convenient to do nothing, but the Ortiz family seems disadvantaged as newcomers and deserve more supporters to speak up.

At the root of the issue is a fence permit approved for the previous property owner in 2017. From looking at the details, I see no evidence of special favoritism or intentional malfeasance, greed or systematic grabbing to take land in the public right of way; it looks like an oddly placed property (like many in the neighborhood) needed a simple fix and it just wasn't looked at any harder than many other instances. The previous owners then invested to upgrade access and security, and it stood that way for several years. When the issue came up later, steps were taken to get an encroachment

permit. This was approved by the City.

I see that the City has now updated the encroachment process by passing a new 2022 encroachment ordinance. The squeaky wheels got the grease by bringing up the issue. Certainly, it's a good idea to formalize the process for everyone now; but for the Ortiz family, the previous encroachment should not have been revoked as it had already been approved by the City.

As a fellow Point Richmond resident, and stakeholder in the public interest issue, I find the implication of malfeasance to be cooked up without evidence on top of mere ambiguity. I welcome the Ortiz family to live here and enjoy their property as it stands, consider it better and safer that way, and see no way it affects me when walking dogs down to Keller Beach in the right of way.

Politicizing this encroachment can be seen in the context around the details:

- The timing of complaints that came up after the fence was put in and had stayed at 8 Western Drive without problems for several years.
- Placement of the fence at 8 Western Drive isn't unique; rocks, tree trunks and other obstacles take similar space on the adjacent property, so the complaints are inconsistent and targeted.
- Real issues with blocking public right of way haven't come up; but without a fence the land poses liability to the city with dumping and security issues.
- The Ortiz family were innocently caught up in a dispute that escalated into racist attacks like graffiti slurs on their fence, and physical threats crossing their fence, ironically making them now need said fence more than ever. Solving this dispute and maintaining their encroachment would only bring them the peace they deserve to enjoy their home without living in fear.

I'm asking the city council to support the Ortiz family morally because they did nothing wrong, and for their neighbors to cut them a break and welcome them so they can enjoy their place and be part of the neighborhood. We won't benefit by forcing them to take down a fence that now protects them and gives them peace of mind.

Patrick Lake  
Point Richmond

**From:** [Philip Rosenthal](#)  
**To:** [Daniel Chavarria](#); [Lina Velasco](#); [Robert Armijo](#)  
**Cc:** [Cesar Zepeda](#); [Eduardo Martinez](#); [Doria Robinson](#); [Melvin Willis](#); [Gayle McLaughlin](#); [Soheila Bana](#); [Claudia Jimenez](#); [City Clerk Dept User](#)  
**Subject:** Agenda Item O.1 Encroachment 8 Western Drive Council meeting March 7 in support of issuing an encroachment  
**Date:** Tuesday, March 7, 2023 12:54:27 PM

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Dear City Staff, Mayor and Council members:

I write as a neighbor and taxpayer regarding the 8 Western Drive encroachment.

Although I can't opine on the legality of the project and the applicant's need to resubmit their application, I ask you to consider the following:

- 1) The current homeowner did due- diligence when closing on the property. The fence permit had been cleared and the encroachment issued. We can't be the city where you do everything right and then due to political infighting find yourself the victim of public doxing by city officials and a small fortune in legal and engineering fees.
- 2) The narrative that the driveway is more restrictive to pedestrians, bicycles and cars is false. There is equal or greater shoulder in front of the fence, and this shoulder is both wider and clearer than the encroachment on the two adjacent lots on Western, which have encroached with giant boulders and metal barricades for DECADES. The space between the fence and the street complies with the ordinance's 22 foot setback requirement, and in some places more. The previous public works director measured and confirmed this and spoke to this as a matter of public record. There is room for two vehicles (total 18 feet) with room for a four foot sidewalk or refuge. The homeowner has offered to work with the city to further improve pedestrian safety/refuge.
- 3) Narrative regarding the accessibility and safety of Belvedere is absurd. This is a small lane, ending in (an often) muddy, undefined cul-de-sac. Encouraging parking or further construction is reckless, particularly as it applies to emergency vehicles.
- 4) Fiscal responsibility. There will likely be lawsuits no matter what the council decides. Please consider the ramifications of legal fees compared to the benefit that

would be gained if the project is reversed. Please consider that the previous mayor ( while in office and currently) publically doxed both the previous and current owners, and also doxed the previous owner whilst using language that indicated they were nefarious. This included doxxing and publishing on social media a photo of a mother **with her young child** and the address. **This is morally reprehensible**, and might open the city , and thus the taxpayers, to legal ramifications.

This project is a mess and was no doubt mishandled in the past, but there is a morally clear thing to do...Please leave the poor folks alone to live their lives.

Thanks for considering these points.

Philip Rosenthal

--

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**From:** [Rodrick Satre](#)  
**To:** [Claudia Jimenez](#); [Eduardo Martinez](#); [Gayle McLaughlin](#); [Doria Robinson](#); [Melvin Willis](#); [Cesar Zepeda](#); [City Clerk Dept User](#); [Soheila Bana](#)  
**Cc:** [Clair Brown](#); [Richard Katz](#); [Sandra Beyaert](#); [Philip Rosenthal](#)  
**Subject:** Re: Agenda Item O.1 Encroachment 8 Western Drive  
**Date:** Monday, March 6, 2023 8:20:49 AM

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There may be some confusion about this project and what I was relating to the Council.

Please note that the 8 Western Drive fencing off the public right of way was never brought before the PRNC nor the LUDRC. Therefore there has never been any decision made on this subject at the neighborhood council level. My comments are from me not from LUDRC or PRNC.

As to the fact of this never being brought to LUDRC I can state that fact based on my experience with the LUDRC for the full time of the history behind the project.

I would much preferred that these items get resolved close to home at the neighborhood level than having to take up your valuable time which is finite.

Thank you for listening and for your dedication.

Regards,

Rod Satre

Sent from my Boost Samsung Galaxy A32 5G

Get [Outlook for Android](#)

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**From:** Rodrick Satre

**Sent:** Sunday, March 5, 2023 9:41:43 PM

**To:** Soheila Bana <soheila\_bana@ci.richmond.ca.us>; Claudia Jimenez <claudia\_jimenez@ci.richmond.ca.us>; Eduardo Martinez <eduardo\_martinez@ci.richmond.ca.us>; Gayle McLaughlin <gayle\_mclaughlin@ci.richmond.ca.us>; Doria Robinson <doria\_robinson@ci.richmond.ca.us>; Melvin Willis <melvin\_willis@ci.richmond.ca.us>; Cesar Zepeda <cesar\_zepeda@ci.richmond.ca.us>; cityclerkdept@ci.richmond.ca.us <cityclerkdept@ci.richmond.ca.us>

**Cc:** Clair Brown <clairbrown@gmail.com>; Richard Katz <richard808@gmail.com>; Sandra Beyaert <sbeyaert@earthlink.net>; Philip Rosenthal <prnc.pres@gmail.com>

**Subject:** Agenda Item O.1 Encroachment 8 Western Drive

Dear City Council and Honorable Mayor;

I have been the chair of the local Point Richmond Neighborhood Council Land Use Design Review Committee or a member of the LUDRC since 1995. I am still the Chair of the LUDRC and confirm that the above fence encroachment and installation at 8 Western Drive was NEVER brought by any applicant to the PRNC LUDRC, even now with this elevated to a City Council hearing.

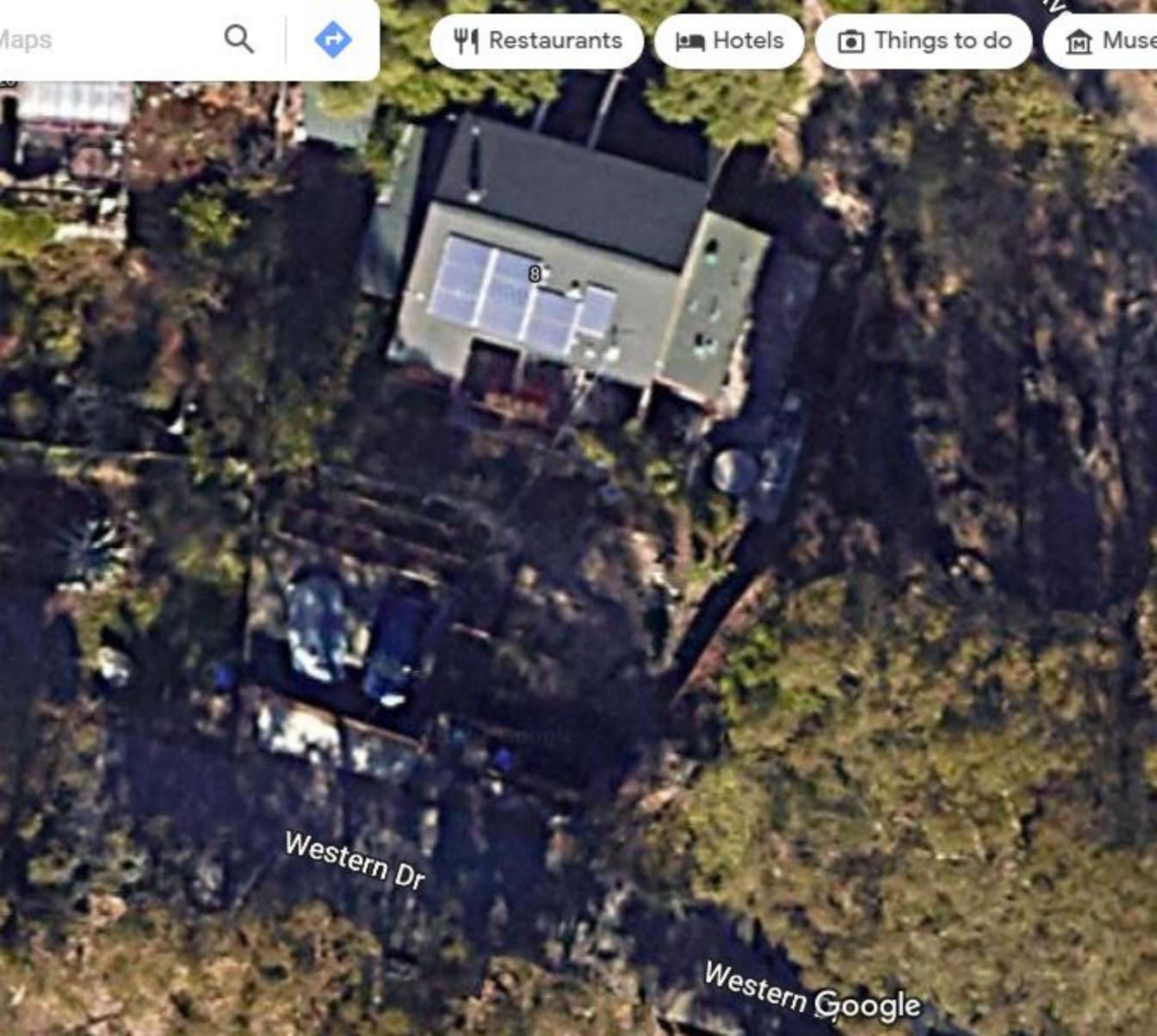
That fact alone is in violation of the Ordinance 09-22 N.S. section 12.30.110 NOTICE REQUIREMENTS. I caution the City Council to enact ordinances and then within a year, totally act in violation to those very ordinances. In this present item, the former land owner knowingly took a sizeable chunk of real estate from the public right of way and fenced it off for personal use and gain, and in order to sell the land shortly thereafter for over \$1.3million. I've attached aerial photos and the county records of the subject property of 8 Western Drive *[you will also note that the fence as installed is set outside of its owned property and takes land from APN 5561700715 thus the City of Richmond is asking Council authorize a **taking of land from other property owners without notice or compensation**]* which shows substantial land accessible for parking from Belvedere Drive as well as an existing parking structure located above the present home of 8 Western Drive. The Western Drive street views show both how narrow this street already is and how restricted [if not impossible] two way traffic is due to this present fence encroachment.

IF the project had been presented to the community, it would most likely been heavily challenged by those most impacted individuals and by other persons that wish to travel our paved streets safely.

I request the **City Council deny the encroachment agreement** and seek recourse from the owner to have this unsafe fence, which is also 6 feet tall, **another violation**, removed.

Regards,

Rod Satre, Chair LUDRC



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John M. Gioia

City Of Richmond

Western Dr

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8 Western Dr

Richmond, California

Google Street View

Feb 2023

[See more dates](#)



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PHOTO

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**From:** [Sandra Beyaert](#)  
**To:** [Soheila Bana](#); [Claudia Jimenez](#); [Eduardo Martinez](#); [Gayle McLaughlin](#); [Doria Robinson](#); [Melvin Willis](#); [Cesar Zepeda](#); [City Clerk Dept User](#)  
**Subject:** Public Comments - Agenda Item O.1 Encroachment 8 Western Drive  
**Date:** Sunday, March 5, 2023 3:50:17 PM  
**Attachments:** [PastedGraphic-2.tiff](#)

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Mayor Martinez and City Councilors,

Please do not approve the Encroachment Agreement for 8 Western Drive. Allowing this 27 to 39 feet encroachment on public right-of-way would set a terrible precedent in at least two respects.

First, it would reward those taking unlawful possession of public property. Second, it would tell Richmond residents, especially in Point Richmond, that it is fine to wall in public streets by encroaching on the public right-of-way. Please look at the photo below and visualize how narrow Western Drive would be walled in if residents located on both sides of the streets were allowed to erect six foot high front yard fences within three feet of the pavement's edge.

Approving this encroachment would set things in motion for a wall of high fences along public streets in Point Richmond. How could I walk safely, getting out of the path of oncoming trucks and cars near my home where there are narrow streets lacking sidewalks????

Sandra

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Sandra Beyaert  
73 Belvedere Ave., Richmond  
sbeyaert1@gmail.com  
Tel. 510-235-2835



**From:** [Tom Piazza](#)  
**To:** [Soheila Bana](#); [Claudia Jimenez](#); [Eduardo Martinez](#); [Gayle McLaughlin](#); [Doria Robinson](#); [Melvin Willis](#); [Cesar Zepeda](#); [City Clerk Dept User](#)  
**Subject:** Agenda Item O.1 Encroachment 8 Western Drive  
**Date:** Monday, March 6, 2023 10:18:37 AM

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(Note: This is the same email sent on Feb. 14, with a new subject line)

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:** [Vivien Feyer](#)  
**To:** [Soheila Bana](#); [Claudia Jimenez](#); [Eduardo Martinez](#); [Gayle McLaughlin](#); [Doria Robinson](#); [Melvin Willis](#); [Cesar Zepeda](#); [City Clerk Dept User](#)  
**Subject:** Public Comments - Agenda Item O.1 Encroachment 8 Western Drive, City Council meeting March 7, 2023  
**Date:** Tuesday, March 7, 2023 10:09:15 AM

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Soheila Bana <[soheila\\_bana@ci.richmond.ca.us](mailto:soheila_bana@ci.richmond.ca.us)>, Claudia Jimenez <[claudia\\_jimenez@ci.richmond.ca.us](mailto:claudia_jimenez@ci.richmond.ca.us)>, Eduardo Martinez <[eduardo\\_martinez@ci.richmond.ca.us](mailto:eduardo_martinez@ci.richmond.ca.us)>, Gayle McLaughlin <[gayle\\_mclaughlin@ci.richmond.ca.us](mailto:gayle_mclaughlin@ci.richmond.ca.us)>, Doria Robinson <[doria\\_robinson@ci.richmond.ca.us](mailto:doria_robinson@ci.richmond.ca.us)>, Melvin Willis <[melvin\\_willis@ci.richmond.ca.us](mailto:melvin_willis@ci.richmond.ca.us)>, Cesar Zepeda <[cesar\\_zepeda@ci.richmond.ca.us](mailto:cesar_zepeda@ci.richmond.ca.us)>, <[cityclerkdept@ci.richmond.ca.us](mailto:cityclerkdept@ci.richmond.ca.us)>

Dear City Council Members,

Please do not approve the Encroachment Agreement for 8 Western Drive.

I would like to join the many Richmond residents who have been voicing concern about what seems to be a very serious and dangerous mistake.

I worry about the safety of pedestrians, bicyclists and drivers at this very dangerous corner. Also of the wheelchairs and baby strollers that I see in that area frequently - and of their precious occupants. And of course also the dogs and dog walkers!

I worry about safe access to the main entrance to one of Richmond's most beautiful parks.

I also worry about the precedent that this approval might set, allowing residents to wall in public land?

Not only does this seem to be a very bad idea, but the potential future narrowing of Western Drive, in particular, could cause a huge cascade of problems in the future. Fire safety is of course a primary concern. We are also looking at many years of work on the sewer main along Western Drive, which will necessitate more space than ever for vehicle parking along the already very narrow road. Permitting the walling off any public land along Western Drive, especially at this corner, and at this time, seems to be a clear error.

Thank you for taking the concerns of all our neighbors seriously, and for looking closely at all of the complicated history on this issue before making a decision that

could have devastating consequences.

My heart goes out to the new owners of this property, but I believe that there are much better ways to resolve the situation for all involved.

With big appreciation,  
Vivien

*Vivien Feyer*, EdM, CAS

Richmond resident, Western Drive

PPE For All - Founder / Project Manager

[vivfeyer@gmail.com](mailto:vivfeyer@gmail.com)

**From:** [Cordell Hindler](#)  
**To:** [City Clerk Dept User](#)  
**Subject:** Public Comments- P.1 Budget Session  
**Date:** Thursday, March 2, 2023 5:02:12 PM

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Hello Mayor Martinez, Councilmembers and Staff,

I am Asking that the Council To Approve the Resolution as Presented by Staff

Sincerely  
Cordell