

RICHMOND, CALIFORNIA,

April 4, 2023, 5:00 p.m.
Community Services Building
440 Civic Center Plaza
Richmond, CA 94804

A. OPEN SESSION TO HEAR PUBLIC COMMENT BEFORE CLOSED SESSION

Open Session was called to order at 5:02 p.m. by Mayor Eduardo Martinez.

B. ROLL CALL

Present: Councilmembers Soheila Bana, Claudia Jimenez, Cesar Zepeda, Melvin Willis, and Mayor Eduardo Martinez. **Absent:** Councilmember Doria Robinson arrived after adjourning to Closed Session. Vice Mayor McLaughlin was absent the entire meeting.

C. CLOSED SESSION

C.1 CONFERENCE WITH LEGAL COUNSEL- WORKERS' COMPENSATION CLAIMS (Pursuant to Government Code § 54956.95) (Two Employees)

- Claimant: Employee - Police Department
- Five Claims: 18000105COR, 17000123COR, 21000065COR, 21000140COR. 21000141COR
- Agency Claimed Against: City of Richmond

C.2 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (paragraph (1) of Subdivision [d] of Government Code Section 54956.9)

- Winehaven v. City of Richmond
- Guidiville Rancheria of California, et al. v. United States of America, et al.
- North Coast Rivers Alliance et al./Point Molate Alliance et al. v. City of Richmond

C.3 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

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

- Property: Terminal One

- Agency negotiators: Lina Velasco and Dave Aleshire
- Negotiating parties: Terminal One Development LLC
- Under negotiation: Price and terms of payment
- Property: Metro Walk Phase II at Richmond Transit Village
- Agency Negotiators: Nannette Beacham, Lina Velasco
- Negotiating Parties: Pacific West Builders, Inc., San Francisco Bay Area Rapid Transit District
- Under negotiation: Price and terms of payment (11th Amendment/Disposition and Development Agreement)

D. PUBLIC COMMENT BEFORE CLOSED SESSION (limited to items on the Closed Session agenda only)

None.

E. ADJOURN TO CLOSED SESSION

The meeting adjourned at 5:05 p.m.

F. REGULAR MEETING OF THE RICHMOND CITY COUNCIL

The meeting was called to order at 6:32 p.m. by Mayor Eduardo Martinez.

G. PLEDGE OF ALLEGIANCE

Mayor Eduardo Martinez led the Pledge of Allegiance to the Flag.

H. ROLL CALL

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

I. STATEMENT OF CONFLICT OF INTEREST

None.

J. AGENDA REVIEW

Items **Q.2.a.** *Oppose California Senate Bill 423 Streamlined Housing Approvals*; **Q.3.a.** *Approval to attend the Community Village Symposium in Austin, Texas*; **Q.6.a.** *Out-of-State Travel Approval for IT Manager and Senior Programmer to attend the Annual Tyler Technology Conference in Texas*; **Q.7.c.** *Contract with the Richmond Police Activities League to Provide Workforce Training and Work Experience Opportunities* were removed from the Consent Calendar for discussion. Item **O.1** *Recognition of Ramadan and Eld Al-Fitr* was moved to be heard directly after Agenda Review.

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

C.1 CONFERENCE WITH LEGAL COUNSEL- WORKERS' COMPENSATION CLAIMS (Pursuant to Government Code § 54956.95) (Two Employees)

Claimant: Employee - Police Department

Five Claims: 18000105COR, 17000123COR, 21000065COR, 21000140COR.

21000141COR Agency Claimed Against: City of Richmond

Withdrawn

**C.2 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(paragraph (1) of Subdivision [d] of Government Code Section 54956.9)**

- Winehaven v. City of Richmond
- Guidiville Rancheria of California, et al. v. United States of America, et al.
- North Coast Rivers Alliance et al./Point Molate Alliance et al. v. City of Richmond

Not discussed

C.3 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

Not discussed

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

Property: Terminal One Agency negotiators: Lina Velasco and Dave Aleshire

Negotiating parties: Terminal One Development LLC

Under negotiation: Price and terms of payment

Discussed. No reportable action.

Property: Metro Walk Phase II at Richmond Transit Village

Agency Negotiators: Nannette Beacham, Lina Velasco

Negotiating Parties: Pacific West Builders, Inc., San Francisco Bay Area Rapid Transit District

Under negotiation: Price and terms of payment (11th Amendment/Disposition and Development Agreement)

Not discussed.

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

City Manager, Shasa Curl, announced that the Community Budget Meetings would be on April 10th at 7 p.m., April 17th at 3 p.m., and April 20th at 1 p.m. via Zoom and in person in the City Council Chamber. More information could be obtained by calling 510-412-2077, budget_helpdesk@ci.richmond.ca.us, or www.ci.richmond.ca.us/budgetmeetings. Ms. Curl also announced the city's 1st Annual Citywide Garage Sale would be on Saturday, April 13th from 9 a.m. to 3 p.m. The deadline to register is Friday, April 11th and a \$10 non-refundable fee was required. More information could be obtained by calling 510-620-6793.

M. REPORTS OF OFFICERS: REFERRALS TO STAFF, AND GENERAL REPORTS (INCLUDING AB 1234 REPORTS)(limited to two minutes per Councilmember) (public comment allowed under Open Forum)

Councilmember Bana stated that she would attend a conference with Community First Village in Austin, Texas to view models for the homeless community.

Councilmember Zepeda reported that he attended a community meeting for the Keller Beach Sewer Project and also announced that Saturday, April 8, 2023, was the Point Richmond Spring Fling from 11 a.m. to 4 p.m.

Mayor Martinez stated he attended the WELL 11th Annual Statewide Conference regarding climate change and how it affects water availability.

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

Public Works Director, Daniel Chavarria gave the following update: Dumpster Days; Illegal Dumping; 3 Encampment Abatement; RV Dismantling; Weed Abatement; Downed Tree Removal; Graffiti Removal; Abatement Staff Hours; Illegal Dumping Tonnage per month; Illegal Dumping Total cost per month. Discussion ensued. Councilmembers requested that garbage tonnage collected was tracked and a map with locations where dumping frequently occurs.

O. PRESENTATIONS, PROCLAMATIONS, AND COMMENDATIONS (public comment allowed under Open Forum)

O.1 Recognition of Ramadan and Eid Al-Fitr

PROCLAMATION acknowledging Ramadan and Eid Al-Fitr - Councilmember Soheila Bana (510-620-6743) and Mayor Eduardo Martinez (510-620-6503).

Mayor Martinez read and presented the proclamation acknowledging Ramadan and Eid Al-Fitr.

P. 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)

Mark Wassberg gave comments regarding the Transgender Flag that was raised in front of City Hall.

Richard Katz gave comments regarding 8 Western Drive and the permit issued.

Julie Perez, Rick Perez, and Patricia Perez gave comments regarding the death of Pedie Perez.

Larry Lewis announced the following: a commencement ceremony for Josh and Elena Genser Culinary Center would be at Richmond PAL on Wednesday, April 5, 2023, at 2 p.m.; Juneteenth Carnival. on 25th street would be on June 16, 17, and 18, 2023 at 25th and Barrett.

A.M. Jenkins gave comments regarding the Housing First Program.

Naomi Williams announced that the Juneteenth Carnival Parade and Family Day would be on June 17, 2023, which would begin at Booker T. Anderson Center and end at Nicholl Park.

Q. 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.)

Councilmember Bana voted No on Item Q.10.

Motion by Councilmember Cesar Zepeda

Seconded by Councilmember Claudia Jimenez

Ayes (6): Councilmember Soheila Bana, Councilmember Claudia Jimenez, Councilmember Doria Robinson, Councilmember Melvin Willis, Councilmember Cesar Zepeda, and Mayor Eduardo Martinez

Absent (1): Vice Mayor Gayle McLaughlin

Passed (6 to 0)

Q.1 City Clerk's Office

Q.1.a City Council Meeting Minutes

APPROVE the minutes of the March 7, 2023, regular City Council meeting - City Clerk's Office (Pamela Christian 510-620-6513).

Q.2 City Council

Q.2.a Oppose California Senate Bill 423 Streamlined Housing Approvals

ADOPT a resolution opposing California Senate Bill 423, as introduced (Wiener) Streamlined housing approvals: multifamily housing developments: SB 35 (Chapter 366, Statutes of 2017) expansion – Councilmember Soheila Bana (510-620-6743).

Item continued to the May 2, 2023, City Council meeting.

Q.3 Community Development

Q.3.a Approval to Attend the Community Village Symposium in Austin, Texas

APPROVE travel requests for Jesus M. Morales, Housing Manager, and Robert Armijo, Deputy Director of Public Works/City Engineer to attend the Symposium for Goodness' Sake in Austin, Texas to learn about the Community First! Village model for addressing intractable homelessness – Community Development Department (Lina Velasco 510-620-6841).

I.T. Director Sue Hartman and Community Services Director Lina Velasco gave an overview. Discussion ensued. Sara Cantor and Deborah Bayer gave comments. Further discussion ensued. Councilmembers stated that they should adhere to the resolution in place banning travel to certain states and suggested that a letter be sent to inform the various states of Richmond's travel ban. Mayor McLaughlin called for the question. A motion was made to approve the travel request and remove Councilmember Zepeda from attending.

Motion by Councilmember Soheila Bana

Seconded by Councilmember Cesar Zepeda

To approve the travel request and remove Councilmember Zepeda from attending.

Ayes (2): Councilmember Soheila Bana, and Mayor Eduardo Martinez

Noes (2): Councilmember Claudia Jimenez, and Councilmember Doria Robinson

Abstentions (2): Councilmember Melvin Willis, and Councilmember Cesar Zepeda

Failed (2 to 2)

Q.4 Finance Department

Q.4.a Ratification of the City Manager's Approval of three Emergency Expenditures Executed to Mitigate the Emergency Arising from January's Rainstorms

RATIFY three expenditures approved by the Director of Emergency Services during the January 2023 activation of the Emergency Operations Center (EOC) to include contracts with Julian Tree Care, Inc., and Allied Universal Security Services, and a credit card transaction with Hyatt Place Emeryville, for a total amount of \$174,000 – Finance Department (Nickie Mastay 510-620-6609/Mubeen Qadar 510-412-2077).

Q.4.b Investment and Cash Balance Report and Monthly Overtime Reports for the Month of February 2023

RECEIVE the City's Investment and Cash Balance Report and monthly Overtime Reports for the month of February 2023 – Finance Department (Nickie Mastay/Mubeen Qader 510-412-2077).

Q.5 Human Resources

Q.5.a Annual Compensation Adjustment for the City Clerk

APPROVE a salary adjustment for the City Clerk effective March 1, 2023, from \$14,092.38 per month to \$14,797 per month (a five percent increase) – Human Resources Department (Sharrone Taylor/Nickie Mastay 510-620-6602).

Q.6 Information Technology

Q.6.a Out-of-State Travel Approval for IT Manager and Senior Programmer to Attend the Annual Tyler Technology Conference in Texas

APPROVE travel requests for the Information Technology Manager and Senior Programmer to attend the Tyler Technology Connect23 Conference in San Antonio, Texas, which includes several presentations that align with the travel exception list – Information Technology Department (Sue Hartman 510-620-6874).

I.T. Director Sue Hartman and Community Services Director Lina Velasco gave an overview. Discussion ensued. Sara Cantor and Deborah Bayer gave comments. Further discussion ensued. Councilmembers stated that they should adhere to the resolution in place banning travel to certain states and suggested that a letter be sent to inform the various states of Richmond's travel ban. Mayor McLaughlin called for the question.

(At 10:55 p.m. a motion was made by Councilmember Jimenez, seconded by Mayor Martinez to suspend the rules until the conclusion of Items

Q.3.a. and Q.6.a., passed by the following vote: Ayes: Councilmembers Bana, Jimenez, Robinson, Willis, Zepeda, and Mayor Martinez. Noes: None. Absent: Vice Mayor McLaughlin. Abstain: None).

A motion was made to approve the travel request and remove Councilmember Zepeda from attending.

Motion by Councilmember Soheila Bana
Seconded by Councilmember Cesar Zepeda

Ayes (2): Councilmember Soheila Bana, and Mayor Eduardo Martinez

Noes (2): Councilmember Claudia Jimenez, and Councilmember Doria Robinson

Abstentions (2): Councilmember Melvin Willis, and Councilmember Cesar Zepeda

Absent (1): Vice Mayor Gayle McLaughlin

Failed (2 to 2)

Q.7 Library and Community Services

Q.7.a Memorandum of Understanding with West Coast Chess Alliance for Chess Programs and Tournaments at Various Community Centers

APPROVE the Memorandum of Understanding between the City of Richmond and West Coast Chess Alliance for afterschool chess lessons, and tournaments at various Community Centers from April 5, 2023, to December 31, 2028 – Community Services Department (Ranjana Maharaj/Tetteh Kisseh 510-620-6919).

Q.7.b First Contract Amendment with Weigh of Life for Workforce Development Services

APPROVE a first amendment to the contract with Weigh of Life, in the amount of \$12,000, for a new total contract amount not to exceed \$28,000, to continue providing workforce development services in support of the Department of Labor's CAREER grant, with a contract term extending through August 19, 2023 – Community Services Department (Tamara Walker 510-307-8006).

Q.7.c Contract with the Richmond Police Activities League to Provide Workforce Training and Work Experience Opportunities

APPROVE a contract with the Richmond Police Activities League (RPAL) to provide workforce training and employment services to 20 youth, for a term commencing April 5, 2023, and ending March 31, 2024, for a total amount not to exceed \$73,700 funded by the California for All Youth grant – Community Services Department/Employment and Training (Tamara Walker 510-307-8006).

Item continued to the May 2, 2023, City Council meeting.

Q.7.d Sole-Source Agreement with Columbia Technology Corporation (CTC)

APPROVE a sole-source agreement between Columbia Technology Corporation (CTC) and the Richmond Public Library in an amount not to exceed \$10,000 annually, for the period of March 2022 to June 30, 2025, for an aggregate amount not exceed \$30,000, to provide high-speed

internet access for the Richmond Public Library – Community Services Department/Library Division (LaShonda White/Christopher Larsen 510-620-5524).

Q.7.e Grant Award from the Chevron Community Engagement Foundation

ADOPT a resolution to ACCEPT and APPROPRIATE a \$35,000 grant award from the Chevron Community Engagement Foundation for the Office of Neighborhood Safety (ONS) Operation Peacemaker Fellowship program for the calendar year 2023 - Community Services Department/Office of Neighborhood Safety (Sam Vaughn 510-620-5404).

Adopted **Resolution No. 34-23.**

Q.8 Mayor's Office

Q.8.a Appointment to the Rent Board

APPOINT Jim Hite to the Rent Board, to fill an open position, Term Expires March 21, 2025 - Mayor's Office (Mayor Eduardo Martinez 510-620-6503).

Q.8.b Appointment to Rent Board

APPOINT Elaine Dockens to the Rent Board, to fill an open position, Term Expires March 21, 2025 - Mayor's Office (Mayor Eduardo Martinez 510-620-6503).

Q.9 Police Department

Q.9.a First Amendment to the Contract with Advance Crime Scene Restoration

APPROVE a first amendment to the contract with Advance Crime Scene Restoration (ACSR) to include deep cleaning services for the Department's gym and increase the contract amount to \$41,325, for a new total contract amount of \$158,325 – Police Department (Chief Bisa French 510-621-1802).

Q.10 Public Works

Q.10.a City Council approved an Encroachment Agreement Application at 8 Western Drive. At City Council's direction, City entered into Encroachment Agreement with owners; it now presents the Agreement to City Council, pursuant to RMC 12.30.200, et seq.

APPROVE the Encroachment Agreement between the City and the title of record property holders of 8 Western Drive for a private landowner fence encroachment into the unimproved public right-of-way at said address; and reaffirm its decision that the findings pursuant to RMC 12.30.190(a)(1)(A-G) have been met – Public Works Department (Daniel Chavarria/Robert Armijo 510-620-5477).

Councilmember Bana voted No on the item.

R. PUBLIC HEARINGS

R.1 Interim Ordinance Extending Urgency Ordinance No. 02-23

Hold a Public Hearing and ADOPT an Interim Ordinance establishing a 22-month and 15-day extension of Urgency Ordinance No. 02-23 imposing a temporary moratorium on issuance of building permits requiring new sewer connections to

the Keller Beach Sanitary Sewer; and declaring an urgency thereof – Public Works Department (Daniel Chavarria 510-620-5478/Robert Armijo 510-620-5477).

City Clerk Pamela Christian announced that it was time pursuant to Public Notice to hold a public hearing; and adopt an Interim Ordinance establishing a 22-month and 15-day extension of Urgency Ordinance No. 02-23 imposing a temporary moratorium on issuance of building permits requiring new sewer connections to the Keller Beach Sanitary Sewer; and declaring an urgency thereof. City Engineer, Robert Armijo and Project Manager, Mary Phelps presented the report.

Motion by Councilmember Soheila Bana
Seconded by Councilmember Cesar Zepeda

Ayes (6): Councilmember Soheila Bana, Councilmember Claudia Jimenez, Councilmember Doria Robinson, Councilmember Melvin Willis, Councilmember Cesar Zepeda, and Mayor Eduardo Martinez

Absent (1): Vice Mayor Gayle McLaughlin

Passed (6 to 0)

R.2 Zoning Text and Map Amendments to codify the Richmond Livable Corridors Form-Based Code (FBC) as new Series 15.04.400 in the Richmond Municipal Code (RMC), and other related consistency amendments

HOLD a public hearing; and INTRODUCE an ordinance (first reading) adopting the proposed Zoning Text and Map Amendments adding a new Series 15.04.400 Form-Based Code Zoning Districts in the Richmond Municipal Code (RMC), and associated amendments to Series 100 and 800 of the RMC – Community Development Department (Lina Velasco/ Hector Rojas 510-621-1220/ Roberta Feliciano 510-620-6662).

Community Development Director, Lina Velasco and Karly Kaufman of Rincon Consulting presented a PowerPoint which highlighted the following: Project Area and Background; Objective Design Standards; Project Milestones Summary; Transect Zones Overview; Regulating Plan and Zoning Map Amendment; T5 Main Street Zone; Building Type Standards; Building Types Overview; Frontage Type Standards; Frontage Types Overview; Architectural Standards and Styles Overview; and Environmental Review Overview. Discussion ensued.

City Council suggested that there be a plan for electric vehicle infrastructure, revision to the tree ordinance, a study session for permit parking for special events, and allow for other designs outside of the Form-Based Code. Mayor Martinez opened the public hearing. There were no public speakers. Mayor Martinez closed the public hearing.

A motion was made introduce said ordinance and also to determine how street parking was impacted and consider future amendments for improvement.

Motion by Councilmember Melvin Willis
Seconded by Councilmember Soheila Bana

Ayes (4): Councilmember Soheila Bana, Councilmember Claudia Jimenez, Councilmember Melvin Willis, and Councilmember Cesar Zepeda

Abstentions (2): Councilmember Doria Robinson, and Mayor Eduardo Martinez

Absent (1): Vice Mayor Gayle McLaughlin

Passed (4 to 0)

S. NEW BUSINESS

S.1 The Latina Center & RCF Connects Presentations

RECEIVE a presentation from The Latina Center and RCF Connects in recognition of International Women’s Day and Women’s History Month – City Manager’s Office (Shasa Curl 510-620-6512). This item was continued from the March 28, 2023, meeting.

Item continued to the May 2, 2023, City Council meeting.

S.2 Chevron Hydrogen Project Legal Services Agreement

APPROVE a legal services agreement with Aleshire & Wynder for legal representation related to a proposed Chevron Hydrogen Fuel project, with the term expiration date of June 30, 2024, and for a total amount not to exceed \$85,000 to be paid by fees collected from the project applicant - City Attorney’s Office (James Atencio 620-6509). This item was continued from the February 21, 2023, February 28, 2023, and March 7, 2023, meetings.

City Attorney Dave Aleshire gave an overview of the item. Discussion ensued.

Motion by Councilmember Soheila Bana

Seconded by Councilmember Claudia Jimenez

Ayes (5): Councilmember Soheila Bana, Councilmember Claudia Jimenez, Councilmember Doria Robinson, Councilmember Cesar Zepeda, and Mayor Eduardo Martinez

Absent (1): Vice Mayor Gayle McLaughlin

Passed (5 to 0)

S.3 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 \$156,890 for a four (4) to six (6) month term, with an option to extend for an additional six (6) to twelve (12) months for an additional \$131,906. The April 18, 2023, study session City Council meeting will enable the City Council to refine the scope of work and goals for their strategic planning priorities and collective goal setting to inform development of the fiscal year 2023-24 budget hiring, recruitment, retention, updating performance measures, and assist with informing evaluations for all City staff members – City Manager’s Office (Shasa Curl 510-620-6512).

Management Analyst Lilia Corral and Dr. Lyn Corbett of the Pivotal Group provided a PowerPoint presentation which highlighted the following: Request for Proposals for Teambuilding and Strategic Planning; Procurement Process; Strategic Planning Approach; Draft Timeline; Proposed Schedule & Cost

Information Table. Discussion ensued. Councilmembers requested that the scope of work was refined and a comparable cost analysis with other organizations was included.

A motion was made by Councilmember Bana seconded by Councilmember Zepeda to begin with a minimum modular level to start with city council team building. Councilmember Jimenez, seconded by Mayor Martinez made a substitute motion to have a council retreat for staff and city council to set goals and agenda and approve \$50,000 with no option to extend. Councilmember Robinson made a friendly amendment to have facilitator assist with creating the agenda. The substitute motion passed.

Motion by Councilmember Claudia Jimenez
Seconded by Mayor Eduardo Martinez

Ayes (4): Councilmember Claudia Jimenez, Councilmember Doria Robinson, Councilmember Melvin Willis, and Mayor Eduardo Martinez

Noes (2): Councilmember Soheila Bana, and Councilmember Cesar Zepeda

Absent (1): Vice Mayor Gayle McLaughlin

Passed (4 to 2)

S.4 Richmond Rapid Response Fund (R3F) Update

RECEIVE a report from the Richmond Rapid Response Fund Program (R3F) including updates on funds disbursed, residents served, and strategic plan and guaranteed income program development; and PROVIDE direction to City staff – Community Development Department/Community Services Department (Lina Velasco 510-620-6841/LaShonda White 510-620-6828).

Item continued to the April 18, 2023, City Council meeting as a written report.

T. ADJOURNMENT

There being no further business, the meeting adjourned at 11:20 p.m., to meet again on April 18, 2023.

Clerk of the City of Richmond

Mayor

From: [Clair Brown](#)
To: [City Clerk Dept User](#)
Subject: public comments – Open Forum
Date: Monday, April 3, 2023 4:14:02 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.

Public comments submitted by Prof. Clair Brown, a Richmond resident for over three decades, and a resident next door to 8 Western Drive.

This document makes a public record of the facts related to the fence at 8 Western that encloses almost 1600 sq ft of public land. We want to set the record straight on this important decision by the Richmond staff and the City Council because it impacts the neighborhood and the people who visit Keller Beach by enclosing public land that they had previously used, and allows only the private owners of 8 Western to enjoy the land. The Agenda Report is presented as is, with the facts and information provided by the next door neighbors who have resided at 20 Belvedere for over 30 years.

At least twelve neighbors wrote to the City Attorney and City Council members with much of this information, but they were ignored. The City Attorney and the Director of Public Works only accepted information from the previous and current owners, much of which was not correct. At no time did the City staff reach out to talk to the neighbors, and only used information provided by the current owner, and therefore the staff report contains errors and omits important facts.

We point out that the concerned neighbors have no financial gain in mind and have been acting as good neighbors to keep Western Drive safe for the public. The previous and current owners received a large amount of wealth by increasing the value of their property from enclosing the 1600 sq ft of city land.

These additions are in italics and bold and large type; and set off by the word NOTE.

AGENDA REPORT

Public Works
DATE: March 7, 2023

TO: Mayor Martinez and Members of the City Council

FROM: Daniel Chavarria, PE – Director of Public Works Robert Armijo, PE - Deputy Director of Public Works Director

Subject: 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.

FINANCIAL IMPACT:	This item does not impact the City’s General Fund. The applicant has paid the processing fee(s) for this request and will also remit all costs associated with entering into an Encroachment Agreement and performing improvements, should City Council approve this request.
PREVIOUS COUNCIL ACTION:	This matter was continued from meeting(s) on February 7, 2023, February 21, 2023, and February 28, 2023.
STATEMENT OF THE ISSUE:	On June 28, 2022, the City Council passed an Encroachment Ordinance (Ord. 09-22 N.S.), which codified the process by which landowners could build private improvements that encroached into the public right-of-way (ROW). The owners of 8 Western Drive purchased the home whose front fence encroached in the public ROW subject to an improperly issued encroachment agreement which was revoked. Owners were required to remove the encroachment or apply for an Encroachment Agreement to ensure compliance with City’s new ordinance.

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RECOMMENDED ACTION:	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).
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NOTE: The Statement of the Issue here states that “the front fence of 8 Western Drive was in the public right of way when the current owners purchased the home.” The current owners knew the fence enclosed city property when they purchased 8 Western, but were assured by the previous owners, Ben and Chloe, that they didn’t have to worry about it because Ben would take care of it. Anna told the neighbors that she had paid for property that included the public land behind the fence, and she owned it.

DISCUSSION:
A. Backstory/History

8 Western Drive’s property owners submitted an application for an Encroachment Agreement to the City to address an existing, six (6)-foot fence built within the public right-of-way (“ROW”) and paralleling the front of the residence.

NOTE: The existing six foot fence referred to here is not “paralleling the front of the residence”. The fence has three sides and ENCLOSES a lot that includes over 1500 square feet of public land. One side of the lot is in fact approximately parallel to the front of the house but it is a dozen yards down the hill. The neighbor Richard Katz, who was good friends with the owners Ben and Chlore, let Ben

know that the fence enclosed public land and should be moved to the property line. Ben stated he had a fence permit.

Katz made informal inquiries to the city staff, but these were ignored.

When Ben put 8 Western on the market, and highlighted the front yard [including enclosed public land], the neighbor across the street on Belvedere, made sure that people viewing the house understood that the fence enclosed public property. Ben sent a threatening letter to Richard and Clair that he would sue them for all their assets if they continued to interfere with the sale of 8 Western. [Copy of letter available.] Ben had confused Clair with neighbor Lesli. Richard and Clair went to see their attorney Richard Alexander about Ben's horribly threatening letter. Attorney Alexander advised Richard to make an official complaint about the 8 Western's enclosure of city land and the public safety hazard it caused. At this point, Richard followed his attorney's advice and made an official complaint online. It was ignored for months. Then four neighbors submitted the Writ of Mandamus about the irregularities that make the encroachment agreement illegal.

For a private structure to exist within the public ROW, property owner(s) Anna and James Ortiz (collectively, the "Applicants") must have an Encroachment Agreement with the City. Thus, on or about July 6, 2022, Applicants submitted an Encroachment Agreement Application. At the request of City staff, Applicants revised the Application, and City staff received those revisions on February 9, 2023.

Applicants purchased the property on or around August 1, 2021. Prior to their ownership, 8 Western's former property owners, Chloe Aftel and Benjamin Zicherman (collectively, the "Prior Owners"), elected to build the aforementioned fence. On or about December 21, 2017, the City issued Prior Owners a fence permit; circa January 2018, the fence was erected. Subsequently, the City discovered that the permit, and a later- issued Encroachment Agreement, were issued in error as described below.

After the fence had been completed, the City discovered it was built, in part, in the public ROW and sought to legalize the situation by issuing an encroachment agreement. Following an investigation, the City determined that the Prior Owners should apply for an encroachment agreement. Thereafter, on or around July 12, 2021, the Prior Owners applied for, and obtained, an encroachment agreement. Then, as noted above, on or around August 1, 2021, Applicants purchased the property.

Prior to February 7, 2022, the City discovered defects in the July 12, 2021 application, namely, that the City based its review on the assumption that the fence was along a side yard when, in fact, the fence paralleled the front entry. Because the fence was in the front yard, the initial application for the permit should have provided notice to neighbors and approval from the City Zoning Administrator in accordance with Richmond Municipal Code ("RMC") 15.04.601.060.

NOTE: The controversy about this fence STEMS from the application referred to here as having "defects", trivial matters like being in a front yard instead of a side yard or back yard; and that it should have been publicly Noticed and Heard at a hearing of some kind.

This is a misstatement of the problem and trivializes it. The problem is that the original Application to build a fence was fraudulent.

Here are the 2 pages of the Permit that was issued:

[For graphics, see google doc:

<https://docs.google.com/document/d/1X3CEk2hnUafpYQcXOOikimo3jp-cc71KNT0gJNViN2g/edit>]

The original application had a form to be filled out, a Fence Permit; and was to be accompanied by Plans, submitted to the Planning Division. A fence permit requires that the property owner is going to construct or re-construct a fence according to the Building Official's rules in the Uniform Building Code.

The fence permit is required to include a site plan:

“SITE PLAN - Provide a site plan drawn at an appropriate scale. Include a title block, project name, address, assessor's parcel numbers, and project contacts. Include the following:

- Property lines with dimensions*
- Footprints and dimensions for all existing structures*
- Location of all driveways*
- Location, type, material and height of all existing and proposed fences and gates*
- Location, dimension and purpose of all existing easements*

DESIGN DRAWINGS - Provide drawings illustrating the design of the proposed fences.”

What is crucial here is that the site plan submitted by the previous owners -- PAGE 2, supra -- did not contain the

information required, including the property lines and the assessor's parcel numbers. The Plan that was submitted very clearly shows that the owners, Zicherman and Aftel, drew erroneous “boundaries of their lot” [and therefore the location of their proposed fence] surrounding 1500 feet or so of City land. No parcel number is included. Also note that a formal monumented survey had been done by the owner who sold the property to Zicherman and Aftel, who are required to know their boundaries in order to apply for a fence permit. Their fence permit was fraudulent. The City staff did not notice the “error” and stamped the Permit Application and the inadequate “Plan” with the Stamp of Approval.

This is the crux of the current and continuing controversy. In the Public Hearing at the City Council where the Resolution was approved to give the current owners the right to own and enjoy the formerly public land between their property and Western Drive, it was continually pointed out that the previous owners had a permit to build that fence. A permit obtained by fraud is not a permit. It is unthinkable in our country for a fraud to be made legitimate retroactively.

The City entered into the Encroachment Agreement partly in reliance on staff's analysis, which was based on materials in the initial permit application; however, the Encroachment Agreement did not capture all encroachments.

Moreover, various neighbors brought suit (Katz, et al.), claiming that the encroaching fence was illegal for various reasons, but they withdrew the action through agreement with the City Attorney when the City determined to (i) develop a new Encroachment Ordinance; and (ii) revoke the improperly issued approvals.

NOTE: The encroaching fence “... was illegal for various reasons ...” indeed. This statement ignores the reasons, that go beyond both mere “illegalities” -- the fence endangers the public, even if the Director of Public Works, Joe Leach, was determined to ignore the safety concerns of over a dozen neighbors who met with him and showed him how they could not walk safely down Western Drive because of the stockade fence. He ignored their request for an independent evaluation of the public safety along 8 Western Drive.

The staff report also ignores the worst of illegalities -- the gifting of the land enclosed by the fence is in violation of the California Constitution, Article XVI Section 6, the prohibition against a legislature making any kind of gift.

The Neighbors never withdrew their action, which was and is a Petition to get a Writ of Mandamus over the City. The City has simply welched on a handshake agreement to tear down the fence, which the Petitioner - - Katz et al -- were led to believe had been reached by

Attorneys Aleshire for the City and Daniel Butt Esq for the Petitioners -- the neighbors.

Thus, the City issued a letter on February 7, 2022, which indicated defects in the aforementioned approval. The letter made clear that, if City approval had been mistakenly or illegally issued, a public official could not void the public’s rights, and thus the prior application would afford no rights. Because of this letter, the July 12, 2021 approval was terminated, effective May 8, 2022. The May 2022 date was intended to provide Applicants with a grace period to apply for an Encroachment Agreement pursuant to a newly proposed ordinance to address such applications. Subsequently, the City issued a letter dated May 2, 2022, extending the termination date of May 8, 2022 to July 7, 2022, to allow Applicants more time to apply for an encroachment permit under the newly passed Ordinance.

B. New Ordinance

On June 28, 2022, the City Council passed and adopted Ordinance No. 09-22 N.S. (“Ordinance”), which amended the RMC to address public ROW encroachments. Specifically, the Ordinance amended Article XII - Public Works, Chapter 12.30 - Encroachments and Easements in the Public Rights-of-Way, Part 3 - Private Landowner Encroachment(s) Into Unimproved Portions of Public ROW (i.e., Section 12.30.170, et seq.). The amendments incorporated provisions to codify the City’s long- standing practice of allowing private landowner encroachments into the public ROW, subject to certain conditions.

RMC Chapter 12.30.180 requires private landowners to submit an Encroachment Agreement Application (“Application”) to the Engineering Division of the Public Works Department for encroachments placed within in the public ROW. RMC Chapter

12.30.200, et seq. grants City Council authority to approve such applications based on the City Engineer's Findings. The effect of an approval then authorizes City staff to enter into an Encroachment Agreement between City and the property owner(s). This Encroachment Agreement, once finalized, is recorded on property's title and binds the owner(s) and any successive owners in perpetuity.

NOTE: The staff refers to the City "long-standing practice of allowing private landowners encroachment into the public ROW". However whenever the staff was asked for documentation of this "practice", no examples were provided. Also the code provides for an application of the "plans for an encroachment", but the application by 8 Western is for an illegal fence that already encloses a large amount of public land.

Three neighbors wrote to the City Attorney: "

We are

surprised that your office allowed the Richmond staff to

accept the application for Encroachment Agreement by

8 Western Drive because the encroachment has already

occurred, and RMC 12.20.180 is for applications with

PLANS for a PROPOSED encroachment to be

presented to the City Council." The City Attorney did not

respond.

C. Findings

As stated above, Applicants have applied for approval of a new fence paralleling the roadway at 8 Western Drive which is located in the public ROW. Given the location within the public ROW, Applicants submitted an Encroachment Agreement Application to the City Engineer. Applicants revised their submission, based on staff comments, and resubmitted their application on February 9, 2023. The City Engineer has reviewed the application and recommends the following findings for City Council pursuant to RMC 12.30.190(a)(1)(A-G):

(A) Complete application contains all necessary, supporting information. March 7, 2023 Page 3 of 5 Page 689 of 897

On July 6, 2022, James and Anna Ortiz (collectively, the "Applicant") submitted an application for an Encroachment Agreement, including supporting information.

(B) The encroachment does not conflict with adopted street improvements or similar plans, or any in development or that can be anticipated.

The City has no adopted street improvement or similar plans for Western Drive. The encroachment does not conflict with any anticipated development.

(C) The encroachment does not pose a public health or safety hazard as determined by City Engineer.

Western Drive is a narrow, two (2)-lane street with steep slopes on either side of the roadway. The encroachment does not block vehicle travel or impede sight distance. Due to the slope and existing vegetation found along Western Drive, pedestrian access within the encroachment area is difficult. Due to the proximity of the fence to the intersection of S. Garrard Blvd and Western Drive, the Applicant should be conditioned to provide reflective materials on the fence and to

provide an object marker to the satisfaction of the City Engineer. Thus, the encroachment does not pose a public health or safety hazard.

NOTE: This section C states that the “encroachment” does not pose a public health or safety hazard as determined by the City Engineer.

This is a real problem for this Agenda Report, because here we have a statement and a following paragraph -- “Western Drive is a narrow ... “ et seq -- that is strangely, inexplicably simply wrong. Go for a walk on Western Drive, between Bishop Avenue and Dornan Drive = South Garrard. You will find that this Agenda Report is like unto Lewis Carroll’s Alice in Wonderland or Through the Looking Glass -- simply fanciful. The most brazen part of this is the statement “the encroachment does not block vehicle travel or impede sight distance.” The fence and its accompanying boulders set in the former sidewalk/walkway simply block the road; narrow the road. The road was already narrow, and it was/is a blind hill! On the south side it is hemmed in by a stout steel guard rail. On the north side, in front of 8 Western, it was a very wide area. What is most remarkable about the safety hazard posed by the controversial fence becomes apparent when you walk along Western Drive next to that fence. You can be walking along, and a person with a stroller happens to be walking along the same way, when a car comes southbound on Dornan Drive and makes a right turn

onto Western and guns its engine to get over the hill, past where the yellow street sign says “Road Narrows Blind Hill 5 MPH”. The look of terror on that person’s face is unforgettable. The car of course slows down cresting the hill, and the driver cautiously continues westbound on Western.

What you have to realize about this scenario is that the person with the stroller is never going to go for a walk on that stretch of street again. The Public Works Department can go on assuming that nobody is endangered, but it is self-evident that they aren’t going to be asking that person with the stroller nor anybody else similarly situated. The area becomes a no-man’s land, with the City declaring it perfectly safe despite the fact that an illegally constructed fence made it impossible to walk along there. Mind boggling.

When the problem with the illegally constructed fence was first brought to the attention of the City Engineer, Jonellyn Whales of the City’s Planning Department told a City Engineering Inspector to “Back off.” Thence followed the whole charade of drafting and signing and papering over the situation via the freshly minted Encroachment “Agreement” process.

(D) The encroachment does not substantially obscure the main property frontage.

The encroachment is a fence that is six (6) feet tall; gravel driveway; stairs to access the house; waste/ recycling storage; and two (2)-foot tall retaining walls. The existing residence is located higher than the street and close to the property line. The stairs are required to access the house from Western Drive. As the residence is higher than the fence, this encroachment does not obscure the main property frontage.

NOTE: This paragraph, and the following paragraph E and F, are simply untrue. The rebuttal of these statements is best made by inspection. What the neighbors wonder is why the City staff wrote up a fantasy? "The encroachment is necessary to provide reasonable access" it says. The locked fence makes access much more difficult, both for the owners for delivery vans, and for visitors.

(E) The encroachment does not adversely impact or affect adjacent properties; and/or result in facilities discordant or inconsistent with other structures placed or erected upon the main property or in the existing ROW; and or make gratuitous use of ROW if the property is not strictly necessary for the proposed use.

There are no residences across the street. Due to the topography and configuration of the residence on the existing parcel, the encroachment is necessary to provide reasonable access.

(F) The encroachment has a sufficient setback from street curbs or pavement edges and does not negatively impact the area's reasonable use as determined by the City Engineer. The proposed fence is set back 3-ft (or more) from the edge of pavement.

The encroachment varies from slightly less than four (4) to six (6) feet from the edge of pavement. RMC 12.30.190(a)(2)(J)(i) requires that a four (4)-foot area of space be allocated for a sidewalk. The Applicant should be conditioned to provide a four (4)-foot sidewalk with a protective curb to the satisfaction of the City Engineer. This may require a partial reconstruction of the fence.

NOTE: The encroachment makes it much harder for the public to visit Keller Beach, and to load and unload their cars. The neighbors next door are impacted because they have to watch with extreme concern as families with kids try to safely cross the street because there is

nowhere to get off the narrow Western Drive, to walk along the street, or go safely to the path going up to the Miller-Know trails.

When City Council member Robinson asked the Director of Public Works about the use of the public ROW, she was told that it had no other use. This statement is untrue based on the use of the public ROW before the stockade fence was built along the road. She should have asked the neighbors who knew how the ROW was used by the public for many years until the illegal fence was built. The public enjoyed walking along Western Drive. This is why we have ROW for the public to go for walks, especially by a public beach. The idea that this is not "good use of the land", and the only "good use" is for private enjoyment makes a mockery of the "public or common good".

D. Notice of Application

Pursuant to RMC 12.30.180(a)(8), the Engineering Division sent a Notice of Encroachment Agreement Application to properties within 300 feet of 8 Western. Pursuant to RMC 12.30.200(d), the City Clerk's Office sent a Public Hearing notice by U.S. Mail to neighbors within 300 feet of 8 Western on January 25, 2023. The notice was also published in West County Times on January 27, 2023. The City Clerk's Office noticed the public hearing for February 7, 2023, which was continued to February 21, 2023, and later continued to March 7, 2023. A courtesy notice of the Public Hearing's continuation was sent to neighbors on February 10, 2023, and a separate courtesy notice of the second continuation was sent on February 17, 2023. Additionally, pursuant to 12.300.200(b), a copy of the Encroachment Agreement Application was made available for review in the City Clerk's Office on February 17, 2023.

ENVIRONMENTAL REVIEW:

Section 21084 of the California Public Resources Code specifically requires that CEQA Guidelines include a list of project classes or categories determined not to have a significant environmental effect, thus making said categories exempt from CEQA provision(s). CEQA Guidelines, section(s) 15301 through 15333, list exempt specific project categories, including relevant criteria necessary for a project to meet an exemption. CEQA Guidelines Section 15300.2 includes a list of exceptions precluding categorical-exemption use; here, the proposed project does not trigger any exception that would require an exemption override. The current Application meets the requirements for a categorical exemption pursuant to Section 15303(e), "New Construction or Conversion of Small Structures," where subsection (e) addresses accessory/appurtenant structures, which specifically includes fence(s).

DOCUMENTS ATTACHED:

Attachment 1 – Resolution for 8 Western Drive

Attachment 2 – 8 Western Drive Encroachment Agreement Application

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Job No. 2521 February 9, 2023

Mr. Robert Armijo, PE

Deputy Public Works Director, City Engineer 450 Civic Center Plaza Richmond, CA 94804

**Re: Ortiz Residence and Property at 8 Western Drive (APN 558-012-010), Richmond, California Richmond Municipal Code Section 12.30.170; 12.30.180
Application for Private Landowner Encroachment Agreement
Existing Fence & Improvement along and within Western Drive**

Dear Mr. Armijo.

Our firm has been working with James and Anna Ortiz (“Ortiz Family”) with regard to their residence at 8 Western Drive (Ortiz Property), in the City of Richmond, California (“City”). The Ortiz Family also been working with a land use and permitting attorney, Allan Moore of Law Office of Allan Moore, APC.

On behalf of the Ortiz Family, we assisted with the submittal of an application for an Encroachment Agreement (“Application”), dated July 6, 2022. This Application was submitted pursuant to the recently enacted Richmond Municipal Code (RMC) Section 12.30.170, et seq. (New Encroachment Agreement Ordinance.”)

Our office is responding to your email of February 6, 2023, requesting additional information in support of the previously submitted Encroachment Permit application.

The following is provided as background information:

James and Anna Ortiz purchased this property in August of 2021. The subject fencing and improvements were already in place, having been installed by the prior property owner. One of the primary reasons that the Ortiz family purchased this property was the security provided by the subject fencing. The Ortiz residence fronts on Western Drive and is situated immediately across the street from the East Bay Regional Park District Miller/Knox Regional Shoreline Keller Beach Facility. The fencing provides security and prevents the undesirable gathering of uninvited guests and the associated undesirable debris that accompanies such activities. Fencing provides the added benefit as it prevents undesirable, illegal dumping which has become an ongoing problem for properties with large frontages on public roadways in rural areas with low traffic volumes, especially at night. It should be noted that the

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neighboring property, apn 558-012-009, owners Richard Katz and Clair Brown, share the same exposure as the Ortiz property.

NOTE: These comments by Milani are gratuitous at best, and derogatory at worst; and certainly insulting The Ortiz family has never lived in this neighborhood, and yet they fabricate stories about neighborhood dangers, such as getting shot at by arrows, based upon two arrows found in the yard that actually belonged to Ben’s son [short kid’s arrows with blunt tips]. There’s never been a problem from the people visiting the beach, who are mostly Richmond families from diverse backgrounds. The neighbors welcome the families and are happy they enjoy Keller Beach. It’s one of the nicest places on Earth along that seashore. No trash, no dangers. Milani, Moore and Ortiz are making this up.

I. Background

While this is an Application for an Encroachment Permit, as the City is aware, the subject of this Application is the *existing six-foot fence* (“Fence”) along its property frontage on Western Drive. That Fence was constructed in January 2018 by the sellers of the Ortiz Property (Chloe

Aftel and Benjamin Zicherman, or “Sellers’). The Fence was constructed pursuant to a fence permit issued by the City December 21, 2017.

NOTE: The fence was constructed pursuant to a fraudulent permit; supra.

Three years later, in the fall of 2020, a neighbor complained to the City about the location of the Fence. Pursuant to City request, the Sellers applied for and obtained an encroachment agreement from the City, entered into on July 12, 2021 (“Encroachment Agreement”). The City fully approved the Encroachment Permit, based on standard procedures it had used for years.

NOTE: There were no such standard procedures. This was an improvised coverup, not a standard procedure.

It is noted that on July 30, 2021, the City confirmed by email that: (i) based upon review of the vertical and horizontal geometry of the street (i.e., the clear line of sight from the intersection of Western Drive/Dornan Drive), as well as pedestrian safety, the City had properly granted the Encroachment Permit.

NOTE: The “clear line of sight...” referred to is an error.

Thereafter, on or about August 1, 2021, the Property, together with the constructed Fence, the approved fence permit, and the approved 2021 Encroachment Agreement, was sold to the Ortiz Family.

NOTE: The Title to the Property did not include the land enclosed by the controversial fence. The Ortiz family got a policy of title insurance that specifically excluded the land enclosed by the controversial fence.

By letter dated February 7, 2022 to the Ortiz Family, the City stated that City Staff has “recently” become aware that: (i) the initial application for the permit should have provided notice to neighbors and approval from the City Zoning Administrator in accordance with RMC 15.04.601.060; (ii) City review procedures for the initial permit were not followed; and (ii) The City entered into the Encroachment Agreement in reliance on staff’s analysis of the permit application. The City’s letter further states that if a permit is “mistakenly or illegally issued by the City, no rights are given thereby.”

The City’s February 7, 2022, letter further stated that, for the above reasons, the City therefore “terminates” the 2021 Encroachment Agreement, effective on May 8, 2022. The City’s reason for the May 8 deadline was that this would allow time for the City to adopt its New Encroachment Agreement Ordinance,” and would further give the Ortiz Family time after such adoption to apply for an Encroachment Agreement under such new ordinance.

The City Council thereafter delayed in adopting the New Encroachment Agreement, finally adopting the Agreement in June 2022. By letter dated May 2, 2022, the City therefor extended

the termination date of May 8, 2022, to July 7, 2022, giving the Ortiz Family time to apply for an encroachment permit under the New Encroachment Agreement Ordinance.

The following reflects the work complete to date to comply with the New Encroachment Ordinance:

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II. Requirements of RMC 12.20.180

1. Letter to City Engineer

Section 12.30.180(a) requires a letter to the City Engineer requesting the Encroachment agreement. Our prior letter of July 7, 2022 accompanied by the completed Application form complied with this Ordinance section. This letter is in support of the prior application and will provide additional documentation as requested in your February 6th email.

2. 12.30.189(a)(1): Name and Address of the Applicant

The Ortiz Family is the Property owner. The Applicant is Milani & Associates, with address notes as follows:

Attn: Mr. Michael Milani
Milani & Associates
2655 Stanwell Dr. #105
Concord, CA 94520
(925) 465-2033/mmilani@milani-eng.com

3. 12.30.180(a)(2): Name of contractor for proposed work

See the Background under Section I, above. Given the Fence is already fully constructed, under the direction and ownership of the prior property owner, this item is deemed not applicable.

4. 12.30.180(a)(3) Location, purpose, and extent of proposed work

Please see the "Summary of Improvements Encroaching on Western Drive," prepared by land surveyors/civil engineer Kister, Savio & Rei, Inc. (KSR), dated 6/3/2021, attached hereto as "Exhibit A."

The KSR exhibit reflects the following existing improvements constructed by the prior property owner within the Western Drive Public Street right-of-way. The purpose of the Encroachment Permit Application is to retain and continue to use the existing improvements detailed below:

1. Six-foot wood fencing and sliding gate.

2. Concrete drive apron with connection to the existing edge of pavement of Western Drive.
3. Gravel staging area.
4. Three (3) tiered wood wall.
5. Access stairs to the upper residence
6. Storage area for garbage and recycling receptacles

Please note that items 3 through 5 have been present on the site for decades.

NOTE: this note, that the gravel and the terracing and the stair up to the house, have been present for decades, represents the truth of the matter here. There never was a problem with the occupants of 8 Western Drive getting to their front door. They didn't need a fence. Chloe and Ben said that the fence they were thinking of building would allow their dogs to stay outside while no one was home. The dogs barked at the people walking by, and caused a noise and nuisance problem all day long.

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The house fronts on Western Drive. The following photos reflect the current improvements that are the subject to the Encroachment Permit application.

Figure 1: oblique shot reflecting full site improvements within Western Drive.

Figure 2: site photo looking directly at Ortiz residence from Western Drive. The improvements subject to the encroachment permit request are in the foreground of the photo.

5. 12.30.180(a)(4), (5) and (6): Time of work, control plan, insurance

See the Background under Section I, above. Given the Fence is already fully constructed, this item is not applicable.

5. 12.30.180(a)(7): Detailed Plans

See Plat Map prepared by Milani & Associates, attached hereto as "Exhibit C."

6. 12.30.180(a)(8): City written notice to adjacent landowners.

As shown below, the Applicant has posted and will maintain the Notice as required under 12.30.180(b). For purposes of this Notice the Hearing Date has been set for February 21 with the meeting being held as a zoom meeting. The posted Notice does also indicate that plans and other information can be obtained at the City Offices.

It should be noted that prior notices that Mrs. Ortiz has posted have subject to vandalism and

graffiti and racial slurs. Richmond PD have been notified of the Notice vandalism on several occasions. The Ortiz family will do its best to maintain the notices as require. If complaints are made at the public hearing that proper posting of the Notices were not made, those complaints should be treated as moot.

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Mrs. Ortiz has provided photographs of the posted notices per your request. She will also document any further vandalism and Graffiti for the record between now and the February 21st meeting date.

7. 12.30.180(a)(9): Any information requested by the City Engineer

The Applicant and Owner have been working with City Staff in preparation of this Application. The Applicant/Owner are ready to provide any information requested by the City Engineer in response to this Application.

(8) 12.30.180(a)(10): Encroachment Agreement Fee

The City Staff has indicated that the Encroachment Agreement Fee to be submitted with the initial application. No further action is needed on this task.

(9) 12.30.180(b): Posted Notice

Notices have been posted. A copy of the posted Notice is attached hereto as "Exhibit B." A copy of the application is on file with the City of Richmond and is available for review at the City Offices.

(10) 12.30.180(c): Statement from Landowner

Set forth below the Applicant's signature below is a signed confirmation from the Owner to the effect that all information in this Application is true and correct.

Compliance with RMC 12.30.190 – Findings and Conditions

In response to your February 6th email and per RMC Section 12.30.190 this office offer the following responses in support findings and conditions in support of the subject Encroachment Permit application:

- 1. A) Complete Application contains all necessary, supporting information. Response:**
A complete application and supporting documentation have been submitted to the City of Richmond.
- 2. B) The encroachment does not conflict with adopted street improvements or similar plans, or any in development or than can be anticipated.**

Response:

Milani & Associates submitted street cross sections along the encroachment frontage of 8 Western Avenue. The cross sections indicate that no reduction in lane travel widths have been impacted. No public safety or visibility constraints have been created by the installation of the subject improvements

NOTE: This is in error. The street used to be wider, obviously; in common parlance, there was more room.

But you have to take a look. Taking tricky pictures is at best obfuscatory and at worst an attempt to deceive.

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See Figures 3 & 4 below:

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Figure 3: Western Drive looking easterly. Project frontage is in the left side of the photograph.

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Figure 4: Western Drive looking westerly. Project frontage is in the right side of the photo.

C) The encroachment does not pose a health or safety hazard as determined by the City Engineer.

Response:

Joe Leach, the City's prior City Engineer had walked the limits of the encroachment area and determined that the improvements did not pose a health or safety hazard. In addition, Milani & Associates submitted street cross sections along the encroachment frontage of 8 Western Avenue. The cross sections indicate that no reduction in lane travel widths have been impacted. It is this office's professional opinion that no public safety or visibility constraints have been created by the installation of the subject improvements.

NOTE: Joe Leach in fact came out to this very stretch of street, Western Drive, and declared to a group of neighbors assembled that "... it doesn't have to provide a public benefit ..." referring to a fence or other project that the City allows a landowner to plunk down in the right of way of a street. He then went back to his office

and came up with the outlandish set of statements quoted here, supra, in this Agenda Report. The dangers caused by the controversial fence are real and present. There's no need to discuss them if a person hasn't come out to Western Drive and felt the terror of a car

bearing down on them and nowhere to run, hemmed in by a tall solid wooden fence.

D) The encroachment does not substantially obscure the main property frontage.

Response:

The house fronts on Western Drive. The Figures 1 and 2 above are site photos which reflect the current improvements that are the subject to the Encroachment Permit application. The photos clearly indicate that the main property frontage and improvements are not substantially obscured.

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E) The encroachment does not adversely impact or affect adjacent properties; and/or result in facilities discordant or inconsistent with the other structures placed or erected upon the main property or in the existing ROW; and or make gratuitous use of ROW if he property is not strictly necessary for the proposed use.

Response: Our office submitted Exhibit "C," Cross Sections - 8 Western Drive. The exhibit clearly identifies the current paved roadway limits before, along and after the subject fencing and encroachment improvements. The exhibit clearly indicates that the subject improvements have not and continue to not inhibit vehicle traffic along Western Drive. The area in question gives the appearance of excess lands that were never intended to support public street improvement. The same condition occurs on the adjoining parcels lying westerly of the subject property, in particular apn 558-012-009.

F) The encroachment has a sufficient setback from street curbs or pavement edges and does not negatively impact the area's responsible use. A standard setback should be no fewer than three feet (3'), subject to the City Engineer's determination that the area's conditions or environment allows otherwise.

Response: Our office submitted Exhibit "C," Cross Sections - 8 Western Drive. Section C-C on the exhibit clearly identifies the setback from the fencing to the edge of travel lane being in excess of three feet (30)'. As previously noted It is this office's professional opinion that no public safety or visibility constraints have been created by the installation of the subject improvements.

I trust this provides you with the information that you require.

Please do not hesitate to call my office with any questions or any requests for more information regarding this Application.

Sincerely Yours,

[Michael Milani](#)

Michael Milani Project Manager Milani & Associates

Attachments (A, B and C as referenced)

cc: Allan C. Moore

Owner

We hereby confirm that all information in support of this Application is true and correct.

James Ortiz

Anna Ortiz

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From: [Cordell Hindler](#)
To: [City Clerk Dept User](#)
Subject: Public Comments-Open Forum
Date: Thursday, March 30, 2023 3:52:01 PM

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Hello Mayor Martinez, Council Members and Staff,

I Have some Comments to go into the Record

1. for the May 2nd Agenda, the Council Should Consider Reinstating the Agenda & Rules and the Public Safety Standing Committees In lined with the City of Berkeley Structured
2. Also to Have Danny Wan to Provide a Presentation on how the Port of Oakland is Recovering from the Pandemic

Sincerely
Cordell

From: [Melinda Mendelson](#)
To: [City Clerk Dept User](#)
Subject: Public Comments--Public Hearing April 4, 2023 at 6:30 pm
Date: Thursday, March 30, 2023 11:52:22 AM

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We would like to add our support to other neighbors who will be dramatically impacted by the Keller Beach Sewer Project for the approval of the 10 month extension to the 45 day moratorium on the issuance of building permits requiring new sewer connections. More information and perhaps more bids are required by all participants including the City of Richmond.

Thank you for voting to extend the moratorium.

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

From: [John Varga](#)
To: [City Clerk Dept User](#)
Subject: Public comments agenda item #S.3
Date: Tuesday, April 4, 2023 12:15:34 PM

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Dear Mayor and City Councilmembers (and with thanks to the City Clerk),

I am writing to you in support of the City's efforts to develop a strategic plan as set out in tonight's Agenda Item S.3. As you may recall, IFPTE Local 21's members took issue with the previous agenda items regarding contracting with an outside vendor to development a strategic plan. We are pleased to see our concerns were heard and the City has taken steps to reduce the financial burden and focus the scope of the process.

As you know, Richmond city staff are stretched thin and performing near miracles on a daily basis to serve the Richmond community. Local 21 supports the responsible efforts to create a strategic plan that demonstrates the vision of our elected City Council members and community stakeholders, helps to establish city-wide priorities, and – equally importantly – respects the workforce who will be implementing those priorities.

Thank you,
John Varga – IFPTE Local 21 Representative, on behalf of the members of IFPTE Local 21

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