

ORDINANCE NO. 03-23 N.S.

**AN INTERIM ORDINANCE, ESTABLISHING A 22-MONTH AND 15-DAY
EXTENSION OF URGENCY ORDINANCE NO. 02-23, IMPOSING A
TEMPORARY MORATORIUM ON THE ISSUANCE OF BUILDING
PERMITS REQUIRING NEW SEWER CONNECTIONS TO THE KELLER
BEACH SANITARY SEWER; AND DECLARING THE URGENCY
THEREOF, PURSUANT TO GOVERNMENT CODE SECTION 65858**

WHEREAS, Government Code Section 65858 (hereinafter “GC Section 65858”) authorizes the City Council to adopt, as an urgency measure, an interim ordinance by a four-fifths vote to temporarily prevent development and/or construction that threatens the public health, safety, and welfare of citizens residing in the Sewer Moratorium Area; and

WHEREAS, on February 21, 2023, in compliance with GC Section 65858, the City Council adopted Urgency Ordinance No. 02-23 N.S. (hereinafter “Urgency Ord. No. 02-23”), which established a 45-day moratorium on the issuance of building permits requiring new sewer connections to the Keller Beach Sanitary Sewer (hereinafter “KBSS”) and declaring the urgency thereof, and which will expire on April 7, 2023; and

WHEREAS, Urgency Ord. No. 02-23 defined “sewer connection” as the connection of a building’s drainage system, which conveys the discharge from soil, waste, and other drainage pipes of a business or residence to the City’s sewer main and/or other applicable sewer infrastructure; and

WHEREAS, GC Section 65858(b) authorizes the City Council to extend Urgency Ord. No. 02-23 for twenty-two (22) months and fifteen (15) days following notice and a public hearing. Said extension shall require a four-fifths vote of the City Council for adoption, and the City Council may subsequently extend for one (1) year; and

WHEREAS, pursuant to GC Section 65858(a) and GC Section 65090, the City Council provided notice by publication in the *East Bay Times* on March 25, 2023 and April 1, 2023, as statutorily mandated and held a subsequent public hearing on April 4, 2023, where it took public comment; and

WHEREAS, pursuant to GC Section 65858(c), the City Council shall not extend an interim ordinance unless said ordinance contains legislative findings that there is a current and immediate threat to public health, safety, or welfare; and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use that is required for zoning ordinance compliance would result in such threat to public health, safety, or welfare; and

WHEREAS, on January 18, 2022, the City Council adopted Resolution No. 08-22, thereby accepting the findings of the Keller Beach Sanitary Sewer CCTV review and assessment report (hereinafter “KBSS Review and Assessment Report”) prepared by NCE-Coastland, dated January 3, 2022, and hereby incorporated within; and

WHEREAS, the KBSS Review and Assessment Report identified a severely compromised pipe and concluded that KBSS should undergo extensive repairs, which would address critical issues; or a pipe replacement and relocation, which would alleviate the critical issues but incur cost and time considerations; and

WHEREAS, the City will perform an in-depth study of alternatives and seek expert consultation; hire contractors; and perform evaluative assessments to devise the best solution, while taking into consideration environmental and public health concerns. By necessity, the City needs time to coordinate its study efforts in a reasonable way with federal, state, and local agencies; affected property owners; and other interested stakeholders to preserve public health, safety, and welfare; and

WHEREAS, the sanitary sewer issues presented by KBSS' condition create an imminent threat to the public health, safety, and welfare as well as the environment in the Sewer Moratorium Area (incorporated herein by reference); and a moratorium on the issuance of building permits requiring a new connection to KBSS will prevent further deterioration and pipe destruction; and

WHEREAS, GC Section 65858(c) provides that the legislative body shall not extend an ordinance unless it contains legislative findings of a current and immediate threat to public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare; and

WHEREAS, GC Section 65858(d) requires the City Council to issue a written report ("Report") describing measures taken to alleviate the condition that led to the adoption of the Urgency Ord. No. 02-23 ten (10) days prior to its expiration or extension. The City Council's Report is incorporated herein; and

WHEREAS, GC Section 66300 authorizes a moratorium impacting housing development only where such a moratorium would protect against an imminent threat to the health and safety of person residing in, or within the immediate vicinity of, the area subject to the moratorium and after the California Department of Housing and Community Development (hereinafter "HCD") has reviewed said moratorium; and

WHEREAS, the City has consulted with HCD, and pursuant to GC Section 66300, and HCD has reviewed the Urgency Ordinance and determined that the moratorium specifically protects against the imminent threat to the health and safety of persons residing in, or within the immediate vicinity of, the Sewer Moratorium Area; and

WHEREAS, development requiring additional sewer connections to the KBSS would result in specific and quantifiable adverse impacts to sanitation infrastructure; the ability to safely and timely repair infrastructure failures; environmental degradation; and pose an immediate threat to the public's health, safety, and welfare for the above-stated reasons; and

WHEREAS, to protect the public's health, safety, and welfare, it is necessary to extend Urgency Ordinance No. 02-23 to ensure that any future development in the Sewer Moratorium Area does not further impact the community and the health and safety of those residing in the Sewer Moratorium Area; and

WHEREAS, feasible alternatives to satisfactorily mitigate or avoid the specific, adverse impacts with respect to public health and safety, sanitation infrastructure, ability to safely and timely repair infrastructure failures, and environmental degradation, have yet to be fully identified; and

WHEREAS, the City has not yet been able to identify any less burdensome or restrictive actions other than the adoption of this moratorium extension; and

WHEREAS, the City Council has determined that a temporary moratorium on the issuance of building permits requiring a new sewer connection to KBSS is necessary to preserve public health, safety, and welfare, and to protect against the imminent threat to the health and safety of person residing in the Sewer Moratorium Area, and the "Whereas" clauses above taken together constitute the City Council's statements and reasons constituting such necessity and urgency.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RICHMOND does ordain as follows:

SECTION 1. The City Council finds, and determines to be in full force and effect, the Recitals set forth in Urgency Ord. No. 02-23, and as above, and hereby incorporates them herein.

SECTION 2. The City Council finds and determines for the reasons stated in the Recitals, that the adoption of this Interim Ordinance is exempt from CEQA under Section(s) 15061(b)(3), 15307, and 15308 of the State CEQA Guidelines.

SECTION 3. The City Council finds that a Report was issued by the City on March 28, 2023, describing measures taken to alleviate the condition which led to the adoption of the urgency ordinance.

SECTION 4. The City Council further finds that the extension of the Urgency Ord. No. 02-23 is necessary to mitigate and/or avoid the specific adverse impacts identified herein, and that there is no feasible alternative to satisfactorily mitigate or avoid the specific, adverse impact identified herein as well or better, with a less burdensome or restrictive effect, than the adoption of the extension of the urgency ordinance.

SECTION 5. Exceptions. The following development activities within the City limits requiring a sewer connection to Keller Beach Sanitary Sewer are exempt from the moratorium:

- A. All projects (if any) that have vested rights to a new sewer connection because of previously submitted and fully complete applications and issued building permits;
- B. Projects ordinarily requiring a connection to the Keller Beach Sanitary Sewer for which the owner/developer submits a design for the extension of a sewer main to an alternative segment, the design which is approved by the City Engineer and/or Public Works Director, and the property owner/developer agrees to be solely responsible for all costs and expenses of installing and maintaining said sewer main, among other terms and conditions provided by the City in an executed and recorded written agreement between the City and property owner/developer to this effect.

SECTION 6. Except subject to procedures provided in Section 8 hereof, a development application for which a sewer connection to the Keller Beach Sanitary Sewer is required may be processed during the moratorium and any extension of the moratorium. However, the application shall be processed at the applicant's sole cost and expense and with the understanding that no building permit shall be issued until the moratorium, including any extension of the moratorium, has expired and that, such permit may not be issued if it is inconsistent with any amendments to the municipal code, ordinances, or regulations that are amended by reason of the review that occurs during the moratorium.

SECTION 7. Term of Moratorium. In accordance with Government Code Section 65858, this Interim Ordinance shall be in full force and effect for a period of 22 (22) months and fifteen (15) days from the date of its adoption. The City Council may extend this Interim Ordinance subsequently for one (1) year, pursuant to Section 65858. Any extension shall also require a public hearing and a four-fifths vote for adoption.

SECTION 8. Petition for Relief from Moratorium.

A. Any person ("Applicant") who has applied for a permit from the City to construct a project requiring a KBSS sewer connection, on or before February 21, 2023, may submit to the Planning Commission a written application requesting relief from the Moratorium ("Request for Relief" or "Request"). The Request for Relief shall identify the Applicant's name, address, and affected permit application number; and it shall state how the Moratorium, as applied to Applicant, would affect Applicant's project ("Project").

- B. In deciding the question of whether relief shall be provided from the Moratorium, the Planning Commission shall make findings as to the Applicant's:
- 1. Reasonable, investment-backed expectation;
 - 2. Reasonable, economic use of subject property;
 - 3. The timing and the impact of adding the KBSS connection; and
 - 4. If the impacts to the Project are reasonable under the circumstances.

C. Public Hearing.

1. In deciding Applicant's Request for Relief, the City Planning Commission shall conduct a public hearing on the Request and shall set a time and place for such hearing to be held within thirty (30) days of the City's receipt of a complete Request.
2. At least ten (10) days before the public hearing, the City shall make available to the public copies of the Request for Relief in the office of the City Clerk.
3. Notice of the public hearing shall be provided in accordance with Richmond Municipal Code Chapter, Article 15.04.803.
4. After receiving public comment, the Planning Commission shall approve, deny, or modify the Request for Relief based on the required findings of Section 8(B)(1-4) above within thirty (30) days following the hearing.
5. The City shall promptly notify Applicant in writing of the Planning Commission's decision on the Request for Relief and shall state the reasons and grounds therefore. The City shall also mail notice of its decision to members of the public who have requested notice.

D. Appeal.

1. Any person aggrieved by the Planning Commission's decision on Applicant's Request for Relief may appeal to the City Council by submitting a written appeal to the City Clerk within ten (10) days of the date of decision date. The appellant shall remit the appeal fee listed in the City's Master Fee Schedule when submitting the appeal.

SECTION 9. The City Clerk shall certify to the passage and adoption of this Interim Ordinance, causing it to be posted as required by law; thereafter, it shall be in full force and effect. As an urgency measure, the Interim Ordinance shall become effective immediately to ensure protection of the public's health, safety, and welfare.

SECTION 10. For the term of this Interim Ordinance, as set forth in Section 7 hereof, the provisions herein shall govern. To the extent any conflict exists between the provisions of this Interim Ordinance and those of any City Code or any other ordinance, resolution, or policy, then all such conflicting provisions shall be suspended with respect hereto.

SECTION 11. This Interim Ordinance is enacted pursuant to the City of Richmond's general police powers; Article II for the City's Charter; Article XI of the California Constitution; and Government Code Section 65858.

SECTION 12. Severability. If any section, subsection, sentence, clause, or phrase of this Interim Ordinance is, for any reason, held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the Interim Ordinance's remaining portions. The City Council declares that it would have adopted this Interim Ordinance, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), or phrase(s) be declared invalid.

I hereby certify that the foregoing Ordinance of the Council of the City of Richmond was duly passed and adopted at a regular meeting thereof held April 4, 2023, by the following vote:

AYES: Councilmembers Bana, Jimenez, Robinson, Willis, Zepeda, and Mayor Martinez.
NOES: None.
ABSTENTIONS: None.
ABSENT: Vice Mayor McLaughlin.

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

EDUARDO MARTINEZ
Mayor

Approved as to form:

DAVE ALESHIRE
City Attorney

State of California }
County of Contra Costa : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Ordinance No. 03-23 N.S.**, passed and adopted by the City Council of the City of Richmond at a regular meeting held on April 4, 2023.


Pamela Christian, Clerk of the City of Richmond