

ORDINANCE NO. 4-17 N.S.

AN URGENCY ORDINANCE, PURSUANT TO GOVERNMENT CODE SECTION 65858, BY THE CITY COUNCIL OF THE CITY OF RICHMOND, ESTABLISHING A TEMPORARY MORATORIUM (45 DAYS) ON CERTAIN USES IN GENERAL PLAN CHANGE AREA 12 (NORTHSHORE)

WHEREAS, Government Code Section 65858 allows a city, including a charter city, to adopt, as an urgency measure, an interim ordinance for the immediate preservation of the public health, safety, and welfare without following the procedures otherwise required prior to adoption of a zoning ordinance; and

WHEREAS, such an urgency measure requires a four-fifths vote (6 votes) of the City Council for adoption and it shall be of no further force and effect forty-five (45) days from its date of adoption; and

WHEREAS, on January 24, 2017, the Richmond City Council directed staff to initiate the General Plan Amendment process pursuant to Richmond Municipal Code Section 15.04.813.030(B) to study a General Plan Amendment that would amend the General Plan 2030 by changing the land use designation for General Plan Change Area 12 (Northshore) from Low Intensity Business/Light Industrial to a mix of: “Open Space”, “Parks and Recreation”, “Agriculture”, and “Public, Cultural and Institutional”; and

WHEREAS, the City needs time to comprehensively study this proposed General Plan Amendment and will study said amendment within a reasonable period of time, as further described below; and

WHEREAS, pursuant to Government Code Section 65350 et seq. and Richmond Municipal Code Article 15.04.813, the General Plan amendment process must include: preparation of a report and recommendation to the Planning Commission from the Planning Director; a recommendation from the Planning Commission with certain recommended findings; and a noticed public hearing with approval, modification, or denial by the City Council; and

WHEREAS, the City of Richmond Planning and Building Services Department plans to conduct at least one public meeting to discuss the proposed General Plan Amendment to Change Area 12 to inform the Planning Director’s report and recommendation; and

WHEREAS, the Planning Director plans to present his report and recommendation to the Planning Commission as soon as reasonably possible, and to take that recommendation to the City Council promptly thereafter; and

WHEREAS, Change Area 12 (Northshore) is currently designated as follows under the General Plan 2030: “The change area is envisioned as a low-intensity hub for office and light industrial businesses that are compatible with surrounding habitat and open space resources. Privately-owned properties located near the Richmond parkway are designated Low Intensity Business/Light Industrial and publicly owned properties located along the shoreline are designated Open Space.”; and

WHEREAS, the proposed land use designations being considered for a General Plan Amendment will protect the coastal resource, preserve that natural resource, and allow for a decrease in greenhouse gas emissions and promote an ecologically sound shoreline; and

WHEREAS, the proposed land use designations being considered for a General Plan Amendment will promote General Plan Policy LU4.1 Richmond Shoreline by minimizing the impacts of development on the shoreline with special attention to intensity, density, and proximity to the water and conserving, protecting and enhancing

the natural and cultural resources along the Richmond Shoreline, as well as General Plan Policy LU4.2 and LU4.3 by preserving open space along the shoreline and protecting natural habitat to ensure biodiversity; and

WHEREAS, Change Area 12 abuts Dotson (formerly Breuner) Marsh and contains valuable natural resources, that perform important ecological functions and processes, provide scenic and recreation qualities important to the character of the City and its north shoreline area; and

WHEREAS, the current land use designation includes Commercial and Light Industrial uses that often involve noise, truck and auto traffic, odors, use of hazardous materials, and other characteristics that may be incompatible with the non-industrial and non-commercial uses being contemplated for Change Area 12, such open space and parks and recreation; and

WHEREAS, there is a current and immediate threat to the public health, safety, and welfare if permits or entitlements for Low Intensity Business/Light Industrial uses are issued, as such permits or entitlements could conflict with amendments to the General Plan that may be adopted as a result of the study of that General Plan Amendment that the City is undertaking; and

WHEREAS, further study is necessary to determine the effects of construction of Low Intensity Business/Light Industrial uses in Change Area 12 on the fragile ecosystem, San Pablo Bay, wetlands, archaeological resources, and the marsh, and also the effects of these natural resources, coastal erosion, and sea level rise on development; and

WHEREAS, due notice of the hearing requesting this temporary moratorium has been given as required by law; and

WHEREAS, for reasons set forth above, this ordinance is declared by the City Council to be necessary for preserving the public peace, health, safety, and welfare to avoid a current, immediate and direct threat to the health, safety, or welfare of the community, and the recitals above taken together constitute the City Council's statements of the reasons constituting such necessity and urgency; and

WHEREAS, for reasons set forth above, this ordinance is declared by the City Council to be necessary, as without this ordinance, the approval of additional subdivisions, use permits, variances, building permits, or the like would result in a current and immediate and direct threat to the health, safety, and welfare of the community, and the recitals above taken together constitute the City Council's statements of the reasons constituting such necessity and urgency; and

WHEREAS, the adoption of this urgency ordinance will not result in new significant environmental effects or a substantial increase in the severity of previously identified significant environmental effects, beyond those effects analyzed in the Final Environmental Impact Report (EIR) for the new General Plan 2030, which was certified by the City Council on April 24, 2012 (CC Resolution No. 51-12). This ordinance is within the scope of the project covered by the General Plan Final Environmental Impact Report including the Findings of Fact regarding Impacts and Mitigation Measures and CEQA Guidelines Section 15168(c)(2). In addition, this ordinance is covered by the general rule that CEQA applies only to the projects which have the potential for causing a significant effect on the environment. It has been determined with certainty that there is no possibility that this urgency ordinance will have a significant effect on the environment; and, therefore, are not subject to CEQA (CEQA Guidelines Section 15061(b)(3)); and

WHEREAS, by the Agenda Report, testimony, and documentary evidence presented at the February 7, 2017 City Council meeting, the City Council has been provided with additional information upon which the findings and actions set forth in this resolution are based; and

WHEREAS, ten days prior to the expiration of this interim ordinance and

any extension thereof, the City Council is required by Government Code Section 65858(d) to issue a written report describing the measures taken to date to alleviate the condition which led to the adoption of this ordinance.

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

SECTION 1. The City Council finds and determines the recitals set forth in this ordinance to be true and correct and hereby makes them a part of this ordinance.

SECTION 2. The City Council finds and determines the adoption of this ordinance complies with CEQA. The adoption of this urgency ordinance will not result in new significant environmental effects or a substantial increase in the severity of previously identified significant environmental effects, beyond those effects analyzed in the Final Environmental Impact Report (EIR) for the new General Plan 2030, which was certified by the City Council on April 24, 2012 (CC Resolution No. 51-12). This ordinance is within the scope of the project covered by the General Plan Final Environmental Impact Report including the Findings of Fact regarding Impacts and Mitigation Measures and CEQA Guidelines Section 15168(c)(2). In addition, this ordinance is covered by the general rule that CEQA applies only to the projects which have the potential for causing a significant effect on the environment. It has been determined with certainty that there is no possibility that this urgency ordinance will have a significant effect on the environment; and, therefore, are not subject to CEQA (CEQA Guidelines Section 15061(b)(3)).

SECTION 3. The City Council hereby directs the Planning and Building Services Department to prepare a report and recommendation to the Planning Commission pursuant to Richmond Municipal Code Section 15.04.813.040(B) regarding a General Plan Amendment that would change the land use designation for General Plan Change Area 12 (Northshore) to: Open Space, Parks and Recreation, Agriculture, and Public, Cultural and Institutional, as well as any necessary revisions to the appropriate General Plan policies, goals, and programs; and directs the Planning Commission to make a recommendation on that proposed General Plan Amendment for the City Council to approve, modify, or deny pursuant to Richmond Code Municipal Code Sections 15.04.813.050-070.

SECTION 4. Until such time as the City concludes the review described above, and approves, modifies, or denies the proposed General Plan Amendment, the City of Richmond hereby declares a moratorium on the approval of new land uses in Change Area 12 that may conflict with the contemplated General Plan Amendment for this area while the City is considering a General Plan Amendment for this area Change Area 12 (which means any new uses other than those that can be classified as Open Space, Parks and Recreation, Agriculture, or Public, Cultural and Institutional). Nothing herein prohibits the processing of applications.

SECTION 5. For purposes of this ordinance, the following definitions shall apply:

- a. "Open Space" land use classification means that land use classification in the Richmond General Plan 2030 that includes wetlands, mudflats, creek corridors and other natural preservation areas, as well as private lands deed-restricted for open space preservation. Public access should be allowed where appropriate.
- b. "Parks and Recreation" land use classification means that land use classification in the Richmond General Plan 2030 that includes publicly owned local and regional parks as well as privately owned recreational facilities such as golf courses. Small-scale recreation-supporting uses such as rental shops, bike repair facilities, small restaurants, interpretation centers and museums are also permitted.

- c. "Agriculture" land use classification means that land use classification in the Richmond General Plan 2030 that includes agricultural uses such as grazing, crop production, farming, community gardens and ancillary residential uses.
- d. "Public, Cultural and Institutional" land use classification means that land use classification in the Richmond General Plan 2030 that includes public, semi-public and educational uses such as civic facilities, community centers, libraries, museums, national park facilities, hospitals and schools.

SECTION 6. In accordance with Government Code Section 65858, this ordinance shall be in full force and effect for a period of 45 days from the date of its adoption, i.e., from **February 7, 2017 through and including March 24, 2017**. This 45-day period may be extended by the City Council, after notice and hearing, in accordance with the provisions of California Government Code Section 65858.

SECTION 7. Petition for Relief from Moratorium. Any person who has applied to construct, modify or place a use which would be affected by this moratorium, and who contends that the moratorium as applied to him or her would be unlawful under Federal, State, or local law or regulation, may submit a written application to the Planning Commission requesting relief from the moratorium. The request for relief from moratorium shall identify the name and address of the applicant, the affected application number, and shall state how the moratorium as applied to him or her would be unlawful under Federal, State or local law or regulation. The Planning Commission, or his/her designee, shall mail to the applicant a written determination accepting or rejecting the request for relief from moratorium.

SECTION 8. The City Clerk shall certify to the passage and adoption of this ordinance causing it to be posted, as required by the law, and it shall thereafter be in full force and effect. This ordinance shall become effective immediately as an interim urgency ordinance, in order to protect the public health, safety, and welfare.

SECTION 9. For the term of this ordinance, as set forth in Section 6 hereof, the provisions of this ordinance shall govern, to the extent there is any conflict between the provisions of this ordinance and the provisions of any other City Code, ordinance, resolution or policy, and all such conflicting provisions shall be suspended.

SECTION 10. This ordinance is enacted pursuant to the City of Richmond's general police powers, Article II of the Charter of the City of Richmond, Article XI of the California Constitution, and Government Code Section 65858.

SECTION 11. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

SECTION 12 Effective Date. As an urgency ordinance, this Ordinance becomes effective immediately upon its adoption at a first reading by a four-fifths vote of the City Council.

Adopted by the City Council of the City of Richmond at a regular meeting held February 7, 2017, by the following vote:

AYES: Councilmembers Choi, Martinez, McLaughlin, Myrick,
Willis, and Vice Mayor Beckles.

NOES: None.

ABSTENTIONS: None.

ABSENT: Mayor Butt.

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:
TOM BUTT
Mayor

Approved as to form:
BRUCE GOODMILLER
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. 4-17 N.S.**, passed and adopted by the City Council of the City of Richmond at a regular meeting held on February 7, 2017.



Pamela Christian, City Clerk of the City of Richmond