

ORDINANCE NO. 5-17 N.S.

**AN URGENCY ORDINANCE, PURSUANT TO GOVERNMENT CODE
SECTION 65858, EXTENDING UNTIL FEBRUARY 7, 2018, A TEMPORARY
MORATORIUM ON CERTAIN USES IN GENERAL PLAN 2030 CHANGE
AREA 12 (NORTHSHORE), WHICH WAS ADOPTED BY THE CITY COUNCIL
ON FEBRUARY 7, 2017 (ORDINANCE NO. 4-17 N.S.)**

THE CITY COUNCIL OF THE CITY OF RICHMOND does ordain as follows:

SECTION 1. The City Council finds and determines that the findings set forth in Ordinance No. 4-17 N.S. are true and correct and hereby makes them a part of this ordinance. The City Council further finds and determines as follows:

- A. On February 7, 2017, the City Council adopted Urgency Ordinance No. 4-17 N.S. establishing a 45-day moratorium on the approval of new land uses in General Plan 2030 Change Area 12 (Northshore) that may conflict with the contemplated General Plan Amendment for this area while the City is considering a General Plan Amendment for this area (which means any new uses other than those that can be classified as Open Space, Parks and Recreation, Agriculture, or Public, Cultural and Institutional); and
- B. The 45-day moratorium will expire on March 24, 2017; and
- C. 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
- D. Such an extension of 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 ten months and fifteen days from the date of the extension; and
- E. 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
- F. The City of Richmond Planning and Building Services Department has been diligently working to develop a schedule for the General Plan amendment process; has been developing a community engagement plan to receive input from property owners and stakeholders, and residents on the contemplated General Plan amendments; has assembled a technical and legal team that will be needed to facilitate this process; has been preparing a scope of work for the land use and economic consultants (Dyett & Bhatia, Urban and Regional Planners and Keyser Marston Associates) to evaluate appropriate land uses and whether such uses provide reasonable economic use of the properties in the area, and otherwise facilitate this General Plan amendment process; has been conducting further research on the history of the real property in this area and reviewed other City plans or documents that may need to be amended to implement the contemplated General Plan amendment; and has contacted the Native American Heritage Commission for a list of Tribes to consult with pursuant to state consultation requirements; and
- G. The City needs additional time to study which particular land uses are appropriate for which specific portions of Change Area 12; the City also needs

additional time to study which particular land uses will provide property owners reasonable economic use of their property in light of applicable constitutional and statutory principles; and

- H. Since the adoption of the City's General Plan 2030, new information on shoreline planning has been released that requires this moratorium extension to preserve the public health, safety and welfare, and that the City must analyze as part of its General Plan amendment process to protect the public health safety and welfare. Specifically, the Federal Emergency Management Agency (FEMA) has prepared and issued new Flood Insurance Rate Map (FIRM) (dated September 30, 2015) for many shoreline areas of the City, including Change Area 12 (Northshore). In addition, the Bay Conservation Development Commission also released its Adapting to Rising Tides Contra Costa County Sea Level Rise Vulnerability Assessment report on February 2016, which includes a broad assessment of Contra Costa County's, including City of Richmond's, shoreline exposure to flooding or inundation from sea level rise scenarios of 0 to 66 inches and extreme tide events from the 1-year to the 500-year extreme tide event; and
- I. The City recently adopted the Richmond Bay Specific Plan (RBSP) to accommodate growth along Richmond's southern shoreline, which includes approximately 5.4 million square feet of new research and development, commercial, and retail space and housing near transit and within the South Richmond Priority Development Area. With adoption of the RBSP, the City needs to assess time frames for and phasing of the City's shoreline development areas based upon available utilities and infrastructure, given that the City is further along in planning for utilities and other infrastructure to accommodate shoreline growth in the RBSP area; and
- J. The City also needs time to coordinate in a reasonable way with Federal and State agencies that regulate coastal development, including public infrastructure and public obligations for shoreline access and protection, in order to preserve public health, safety and welfare; and
- K. Government Code Section 65858(c) provides that the legislative body shall not extend any interim ordinance pursuant to this section unless the ordinance contains legislative findings that there is a current and immediate threat to the 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
- L. For reasons set forth herein and in Ordinance No. 4-17 N.S., 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 (e.g., to protect the community from flooding and sea level rise); and 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 findings above and in Ordinance No. 4-17 N.S. taken together constitute the City Council's statements of the reasons constituting such necessity and urgency; and
- M. Pursuant to Government Code Section 65858(d), the City has issued a report relative to the steps taken to alleviate the conditions that necessitated the adoption of Ordinance No. 4-17 N.S., which is attached and incorporated by reference; and
- N. Due notice of the hearing requesting this temporary moratorium has been given as required by Government Code Section 65090; and

- O. By the Agenda Report, testimony, and documentary evidence presented at the March 21, 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.

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. All provisions of Ordinance No. 4-17 N.S., except for Sections 6 and 7, shall remain in full force and effect during the extended term of the moratorium.

Section 6 of Ordinance No. 4-17 N.S. is revised to reflect that the extended moratorium shall expire, and be no further force and effect, on midnight, **February 7, 2018**, unless a permanent General Plan Amendment for Change Area 12 is adopted earlier, in which case, the moratorium shall expire upon the effective date of the General Plan Amendment.

Section 7 is revised as follows: "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, shall submit a written application to the Planning Commission requesting relief from the moratorium, or the contention shall be waived. 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. Applicant shall provide detailed evidence showing the basis of the application. The request shall be addressed to the Planning Director who shall schedule the matter for a public hearing before the Planning Commission. In any such hearing, the party requesting relief shall have the right to present sworn testimony and to examine and cross-examine witnesses, subject to the claim presentation requirements set forth herein. The Planning Commission's decision shall be appealable to the City Council pursuant to the procedures in Article 15.04.803 of the Richmond Municipal Code. The Director of Planning and Building Services (Planning Director) shall charge fees from the fee schedule for this work, including but not limited to the hourly rate for the time spent on processing the request or a comparable fee, e.g., for non-residential variance (if equal to or lower than the hourly fees). The Planning Director/Zoning Administrator shall also charge fees for expert consultants that are necessary to retain to evaluate the facts of the request, pursuant to this Ordinance and pursuant to their authority in RMC Sections 15.04.802.070-080. The Planning Commission, or his/her designee, shall mail to the applicant a written determination accepting or rejecting the request for relief from moratorium.

If a ground of the request for relief is that the moratorium constitutes a taking of the subject property or any part thereof under the California or United States Constitutions, that ground and all evidence (including specific financial data and analyses, if any) and argument in support thereof shall be clearly stated as a separate ground of the request for relief, or it shall be waived. If the party requesting relief does not present specific evidence as part of the request for relief, the takings claim shall be waived, and appellant shall be deemed to have waived any claim to sworn testimony and cross-examination. This requirement shall apply to claims that the moratorium denies the applicant any reasonable economic use of the subject property, is not sufficiently related to a legitimate

public purpose, is not sufficiently proportional to any impact of the project, or for any other reason constitutes a taking of property for public or private use without just compensation.”

SECTION 4. 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 is 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 5. Effective Date. This Ordinance shall take effect and be in full force immediately upon its passage.

Adopted by the City Council of the City of Richmond at a regular meeting held March 21, 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. 5-17 N.S.**, passed and adopted by the City Council of the City of Richmond at a regular meeting held on March 21, 2017.



Pamela Christian, City Clerk of the City of Richmond