

**ORDINANCE NO. 03-18 N.S.**

**AN URGENCY ORDINANCE PURSUANT TO GOVERNMENT CODE  
SECTION 65858, EXTENDING UNTIL DECEMBER 17, 2018 A TEMPORARY  
MORATORIUM (45 DAYS) ON SCHOOL USES IN CERTAIN ZONES, WHICH  
WAS ADOPTED BY THE CITY COUNCIL ON DECEMBER 19, 2017 (Ordinance  
No. 28-17 N.S.)**

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**WHEREAS**, on December 19, 2017, the City Council adopted Urgency Ordinance No. 28-17 N.S. establishing a 45-day moratorium on the approval of applications to construct, modify or establish schools in the following zones: CM-1, CM-2, CM-3, CM-4, CM-5, and CR while the City is studying zoning amendments relating to school uses in the City of Richmond as more fully described in that ordinance; and

**WHEREAS**, the 45-day moratorium will expire on February 2, 2018; and

**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 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

**WHEREAS**, on November 15, 2016, the City adopted a comprehensive Zoning Update (Ordinance No. 16-16), which allows schools in the following zoning districts with conditional or administrative use permits: RH, R11, RL2, RM1, RM2, CM-1, CM-2, CM-3, CM-4, CM-5, CR, IB, PCI; and

**WHEREAS**, the City currently has approximately ninety schools operating within its boundaries and at least eleven of them are public charter schools and the City has received five applications for new or modified conditional use permits for new charter facilities in the last three years and has received at least two formal inquiries from charter schools desiring to open in the City in recent months; and

**WHEREAS**, the existing public schools have excess capacity to serve their current and projected school-age population in Richmond and are projecting dramatically decreased enrollment going from 21% (2015-2016) to 34% (2019-20 projection) underutilization as described more fully in the West Contra Costa County Unified School District's Long Range Facilities Master Plan; and

**WHEREAS**, underutilized schools lead to school closures, vacant buildings, and result in blighted conditions for communities that lead to significant public health, safety, and welfare impacts; and

**WHEREAS**, the majority of these schools seek to open in commercial or mixed-use zoning districts and Richmond's zoning regulations state that the purpose of commercial zoning districts to "maintain and strengthen the City's economic and fiscal resources and provide employment opportunities for residents of the City and surrounding communities"; and

**WHEREAS**, as part of the City's recent Zoning Update, an area that was previously zoned as Light Industrial shifted to an Industrial Business area to accommodate the planned expansion of an existing charter school. That area -- once occupied by business parks with a variety of commercial and office uses -- is being converted to school playfields and school-related buildings; and

**WHEREAS**, in the Marina Bay neighborhood, former high-tech office buildings were converted to schools, removing these buildings from commercial use; and

**WHEREAS**, in the Hilltop neighborhood, approximately 13.4 acres of Industrial Business land that had contained 165,387 square feet of one- and two-story commercial and industrial developments (comprised of six buildings) has been recently purchased by Making Waves Charter School and repurposed with school-related facilities, including classrooms, gymnasiums, and other recreation facilities; and

**WHEREAS**, the increased number of schools locating and seeking to locate in Richmond is happening in key commercial corridors and mixed-use zoning districts, displacing a diverse range of existing and new commercial uses, which is at odds with certain General Plan Goals and Policies, including but not limited to: Policy ED2.2 to “encourage a diverse and expanded tax base to protect the community from economic cycles and draw from a broad set of revenues including sales and property taxes in order to remain fiscally healthy” and Goal ED5 to “transform Richmond’s key corridors into diverse, mixed-use streets that serve residents with a variety of retail options and services”; and

**WHEREAS**, the increased number of schools located in and near major activity centers, such as the Southern Shoreline and Hilltop Mall area is threatening General Plan Goals and Policies, including but not limited to Goal ED8 to “transform the Southern Shoreline into a model mixed-use neighborhood” that incorporates a “range of commercial uses including industrial activities, high-technology and professional firms and a local-serving retail, as well as medium to higher-density housing . . .” and Policy ED6.1 to “provide higher-density and infill mixed-use development” in the Hilltop area; and

**WHEREAS**, the City of Richmond requires a healthy mix of varying land uses in the City, such as parks, retail, and commercial businesses as more further described in the General Plan, but the highly urbanized setting and scarcity of vacant and/or developable parcels make accommodating these General Plan goals increasingly difficult with an increasing number of parcels being devoted to school uses, especially when there are enough school facilities to serve the City’s current and projected student population; and

**WHEREAS**, the multiple inquiries and recent permits issued for the establishment of new schools may be incompatible with the City’s general plan; and

**WHEREAS**, traffic, safety, and parking concerns have plagued various commercial and mixed-use areas of the City in which schools are locating, as the high concentration of school uses in certain areas has led to long lines of cars accessing the school sites in the mornings and afternoons, which leads to difficulty for public safety vehicles and residents and employees in navigating the area during drop-off and pick-up time, as well as potential danger to pedestrians in these high-traffic areas; and

**WHEREAS**, while the City recently adopted standards for schools in its zoning update, certain locations in the City have recently experienced adverse impacts relating to schools, namely issues relating to parking, traffic, pedestrian safety, and vehicle circulation that need further study; and

**WHEREAS**, the City needs time to comprehensively study the adequacy of its existing zoning regulations to determine which zones are appropriate for schools, and to update existing regulations as necessary to protect public health, safety, and welfare, including student pedestrian safety; and

**WHEREAS**, the City of Richmond Planning and Building Services Department will conduct outreach and hold a study session before the City Council to discuss the proposed zoning amendment to inform the proposed zoning changes relating to school uses prior to formal Planning Commission and City Council consideration; and

**WHEREAS**, 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 use permits, variances, 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**, due notice of the hearing requesting this temporary moratorium has been given as required by Government Code Section 65090; and

**WHEREAS**, for reasons set forth above and in Ordinance No. 28-17 N.S., which recitals are incorporated herein by reference, 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 and in Ordinance No. 28-17 N.S. taken together constitute the City Council's statements of the reasons constituting such necessity and urgency; and

**WHEREAS**, for reasons set forth above and in Ordinance No. 28-17 N.S., which recitals are incorporated herein by reference, this ordinance is declared by the City Council to be necessary, as without this ordinance, the approval of additional use permits, variances, 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 and in Ordinance No. 28-17 N.S. taken together constitute the City Council's statements of the reasons constituting such necessity and urgency; and

**WHEREAS**, pursuant to Government Code Section 65858(d), the City has taken steps to alleviate the conditions that necessitated the adoption of Ordinance No. 28-17 N.S. and has issued a report relative to the steps taken, which is attached and incorporated by reference; and

**WHEREAS**, to the extent that this urgency ordinance extension is a project within the meaning of CEQA, 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 extension 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 January 30, 2018 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.

**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 and in Ordinance No. 28-17 N.S. 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. To the extent that this ordinance is a project within the meaning of CEQA, the adoption of this urgency 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. 28-17 N.S. shall remain in full force and effect during the extended term of the moratorium. Section 6 of Ordinance No. 28-17 N.S. is revised to reflect that the extended moratorium shall expire, and be no further force and effect, on midnight, **December 17, 2018**.

**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.** 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.

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First read at a regular meeting of the Council of the City of Richmond held December 19, 2017, and finally passed and adopted at a regular meeting thereof held January 30, 2018, by the following vote:

AYES: Councilmembers Beckles, Choi, Martinez, Recinos, Mayor Butt, and Vice Mayor Willis.  
NOES: None.  
ABSTENTIONS: None.  
ABSENT: Councilmember Myrick.

**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. 03-18 N.S.**, passed and adopted by the City Council of the City of Richmond at a regular meeting held on January 30, 2018.

  
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Pamela Christian, City Clerk of the City of Richmond

**10-DAY REPORT ON THE CITY OF RICHMOND'S 45-DAY  
URGENCY MORATORIUM ORDINANCE PROHIBITING APPROVAL OF  
SCHOOLS IN CERTAIN ZONING DISTRICTS AS REQUIRED BY  
GOVERNMENT CODE SECTION 65858(d)**

**BACKGROUND:**

On December 19, 2017, pursuant to *Government Code* Sections 65858 and 36937, the City Council adopted Ordinance No. 28-17, a 45-day urgency moratorium ordinance. Ordinance No. 28-17 was adopted in an effort to protect the public health, safety, and welfare by prohibiting the approval of applications to construct, modify or establish schools in the following zoning districts: CM-1, CM-2, CM-3, CM-4, CM-5, and CR pending completion of anticipated zoning text amendments. Under *Government Code* Section 65858(d), at least 10 days prior to the expiration of the 45-day ordinance, the City is to issue a written report describing the measures taken to alleviate the conditions which led to the adoption of the moratorium.

**MEASURES TAKEN TO ALLEVIATE THE CONDITIONS THAT LED TO THE  
ADOPTION OF THE URGENCY ORDINANCE**

1. Since December 19, 2017, City staff has been developing a community engagement plan to receive input from stakeholders, including neighborhood councils, school organizations, and residents on the contemplated zoning text amendments. This effort has included compiling a list of stakeholders to engage in the community input process.
2. The City has assembled a technical and legal team that will be needed to study and implement the recommendations contained in Ordinance 28-17.
3. City staff has commenced the process to amend the Zoning Ordinance (RMC Chapter 15.04) including changes to the land use tables with regards to school uses.
4. City staff has also begun reviewing other City plans or documents that may need to be amended to implement the contemplated zoning text amendments, such as the General Plan.
5. City staff has begun reviewing the land use tables for peer cities with regard to school uses.
6. City staff has created and published a project webpage to post information regarding the project. See [www.ci.richmond.ca.us/schoolszoningamendments](http://www.ci.richmond.ca.us/schoolszoningamendments)

**CONTINUED NEED FOR THE MORATORIUM**

Actions addressing the underlying need for the moratorium are on-going. Specifically, at the direction of Council, staff is preparing amendments to the Zoning Ordinance to purpose amending the land use table for school uses in various commercial and mixed-use districts. These contemplated zoning amendments require public outreach, additional study, a public hearing before the Planning Commission, and a second public hearing before the City Council. These tasks cannot be completed within the initial 45-day period which ends on February 2, 2018. Therefore, the need for the moratorium remains and staff recommends the City Council adopt an ordinance extending the current moratorium for a period of 10 months and 15 days. Unless extended by Council, the moratorium would automatically expire on February 2, 2018. Staff intends to return to Council with zoning amendments by the end of the calendar year.