

ORDINANCE NO. 02-23 N.S.

AN URGENCY ORDINANCE, PURSUANT TO GOVERNMENT CODE SECTION 65858, BY THE CITY COUNCIL OF THE CITY OF RICHMOND, ESTABLISHING A TEMPORARY MORATORIUM ON THE ISSUANCE OF BUILDING PERMITS REQUIRING A NEW SEWER CONNECTION TO THE KELLER BEACH SANITARY SEWER; AND DECLARING THE URGENCY THEREOF

WHEREAS, the Keller Beach Sanitary Sewer was constructed in 1959 and consists of 5,392 linear feet of 8 to 12 inch concrete-encased cast iron interceptor pipe and twenty five (25) sewer structures located within the pipeline, consisting of seventeen (17) manholes and eight (8) cleanouts (“KBSS”); and

WHEREAS, KBSS is located off of Keller Beach in the San Francisco Bay, and remains submerged during ordinary tides, making repair and maintenance of the sewer very difficult due to the limited hours where the sewer can be reached and hazardous conditions; and

WHEREAS, there are approximately two hundred and ninety (290) parcels with existing connections to KBSS of the 362 total parcels of land located on the West Side of Point Richmond, all of which may need to connect to the KBSS (Sewer Moratorium Area, attached and incorporated as Exhibit A); and

WHEREAS, on November 17, 2021, the City received a commissioned assessment and CCTV analysis regarding KBSS. The report recommended performing immediate repairs to the KBSS and potential removal and replacement of portions of KBSS to a different location; and

WHEREAS, portions of KBSS have severe internal corrosion, sand deposits, defective laterals, buried manholes, and limited maintenance access. The current conditions indicate pipe failure is an imminent possibility that would be exacerbated by additional connections to KBSS; and

WHEREAS, certain portions of KBSS’ profile have significant sags due to inconsistent pipe support from the subgrade sand under and around the pipe and will continue to weaken KBSS’ structural integrity with the addition of new sewer connections; and

WHEREAS, KBSS’ interior walls are highly corroded and the remaining wall thickness and structural strength is unknown; and

WHEREAS, sand and seawater has been found in KBSS, indicating breaks and leaks in the collection system, including cracked sewer laterals. The City has begun identifying and repairing damaged laterals to limit further damage; and

WHEREAS, given the location of the KBSS, pipe failure and/or sewage leaks would result in significant environmental harm with the limited ability to quickly remediate the damage and/or leaks due to limited accessibility; and

WHEREAS, additional development requiring sewer connections to KBSS poses an immediate threat to the public health, safety, and welfare, as these new sewer flows could exacerbate the potential for a catastrophic failure which could cause a significant public health and safety threat to existing residences; and

WHEREAS, the City of Richmond Public Works Department is in the process of studying long term solutions to the maintenance and/or relocation of KBSS, mitigation efforts to reduce the risk of pipe failure, and developing sewer connection alternatives for future development in the Sewer Moratorium Area to allow development to proceed prior to complete repair or relocation of the KBSS; and

WHEREAS, the City Council finds and determines that the issuance of building permits requiring a new connection to KBSS would cause the deterioration of the KBSS infrastructure to be exacerbated, creating an imminent threat to public health, safety, and welfare; and

WHEREAS, these issues constitute a current and immediate threat to the public health, safety, and welfare, within the meaning of Government Code Section 65858; and

WHEREAS, on February 21, 2023, the City Council held a duly noticed public hearing to consider adoption of this Ordinance, including providing a public notice pursuant to Government Code § 65090; and

WHEREAS, the approval of any building permits which would require a new sewer connection to KBSS, which are not authorized by this Ordinance, would result in these threats to the public health, safety, and welfare; and

WHEREAS, Government Code Section 65858 authorizes the City Council to adopt an urgency 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, Government Code 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 Department of Housing and Community Development has reviewed said moratorium; and

WHEREAS, the City has consulted with and submitted this Ordinance to the Department of Housing and Community Development for review and approval pursuant to Government Code Section 66300, and this Ordinance shall not be enforceable against housing development until the City has received said approval of this moratorium; and

WHEREAS, the Richmond 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 the 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, BE IT RESOLVED that the City Council of the City of Richmond does ordain as follows:

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct are incorporated herein by reference as it set forth in full.

SECTION 2. The City Council finds and determines the Ordinance is not a project under the California Environmental Quality Act (CEQA), in that it maintains the existing physical environment and prevents changes in the environment and so does not have the potential for resulting in either a direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines Section 15378(a)). It is also exempt under Guidelines Sections 15060(c)(2), as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and Section 15061(b)(3), as there is no possibility that the adoption of this Ordinance may have a significant effect on the environment because it maintains the existing condition of the environment.

SECTION 3. Moratorium. A 45-day moratorium is hereby imposed on the issuance and approval of all building permits that would require a new sewer connection to the Keller Beach Sanitary Sewer, further identified in the attached and incorporated Exhibit A. Accordingly, no such permit may be issued or approved while this moratorium, as it may be extended, is in effect. For the purposes of this Ordinance, “sewer connection” means connecting 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 or other applicable sewer infrastructure.

SECTION 4. Term of Moratorium. 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 21, 2023 through and including April 7, 2023, or, for housing

developments, from the date when the Department of Housing and Community Development approves this moratorium, whichever occurs later. This 45-day period may be extended by the City Council in accordance with the provisions in Government Code Section 65858.

SECTION 5. Exceptions. The following development activities within the City limits requiring a sewer connection to Keller Beach Sanitary Sewer identified in Exhibit A are exempt from the moratorium established in Sections 3 and 4:

- a. Any projects that have vested rights to a new sewer connection because of previously issued building permits; and
- b. Projects ordinarily requiring a connection to the Keller Beach Sanitary Sewer for which an application is submitted that proposes a design for the extension of a sewer main to an alternative segment, the design which is approved by the City Engineer or Public Works Director, and the applicant 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. 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. During the effective period of this moratorium, time periods requiring the commencement of a proposed use or construction shall be tolled for existing entitlements and for entitlements approved during the effective period of the moratorium, for the duration of time that the moratorium is in effect.

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

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 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 4 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.

I hereby certify that the foregoing Urgency Ordinance of the Council of the City of Richmond was duly passed and adopted at a regular meeting thereof held February 21, 2023, by the following vote:

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

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 **Urgency Ordinance No. 02-23 N.S.**, passed and adopted by the City Council of the City of Richmond at a regular meeting held on February 21, 2023.



Pamela Christian, Clerk of the City of Richmond

Exhibit A: Sewer Moratorium Area

PUBLIC WORKS DEPARTMENT

October 2021



1 inch = 300 feet

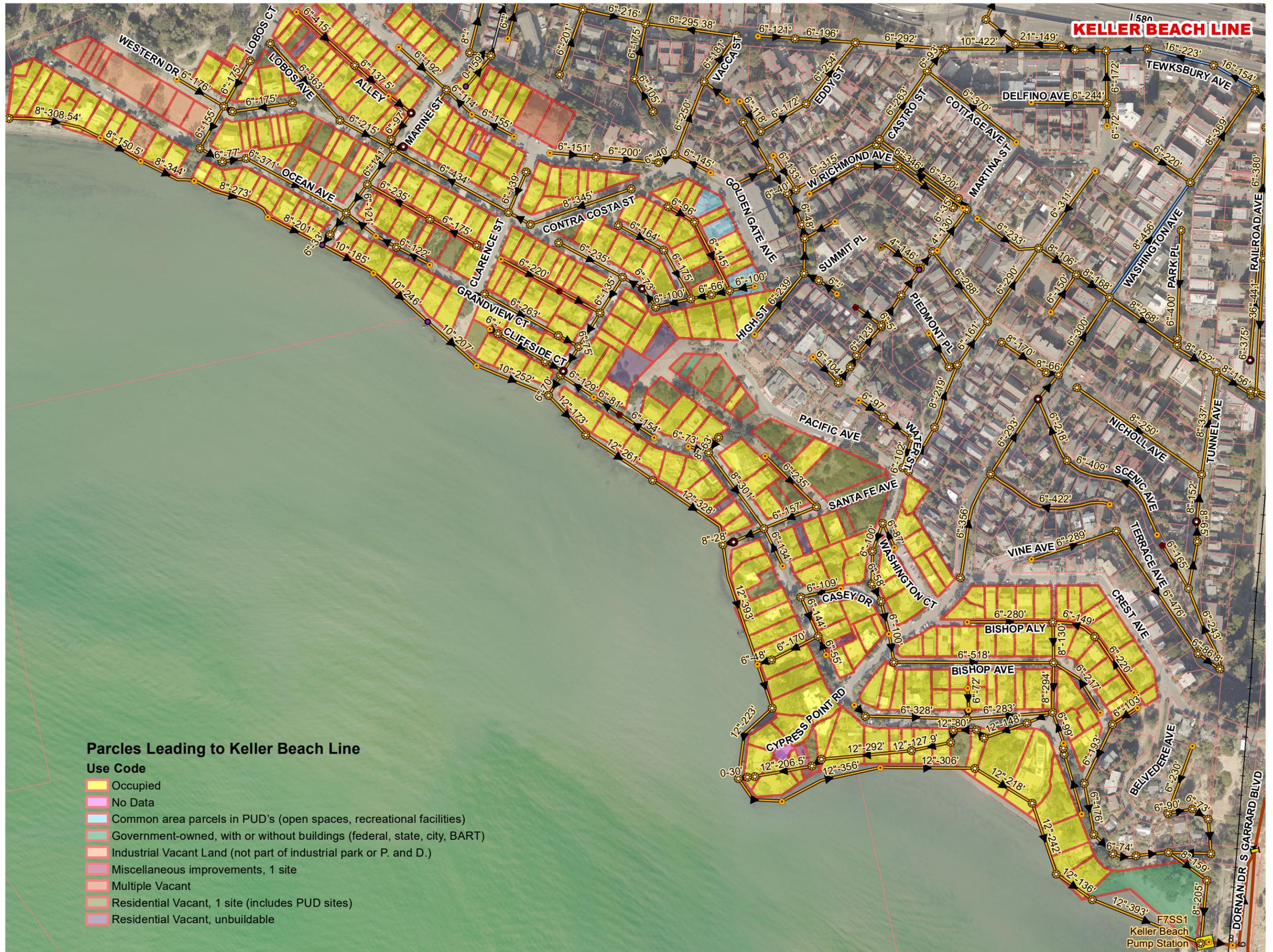


Legend

- Parcels
- Sewer Fitting**
- Lamphole, Active
- Lamphole, Private
- Lamphole, Buried
- Other
- ⊕ Wye
- Sewer Manhole**
- Active
- Buried
- Sewer Structure**
- PS Pump Station
- Sewer Force Main**
- Force Main
- Sewer Gravity Main**
- Active
- Relief
- Abandoned

Parcels Leading to Keller Beach Line

- Use Code**
- Occupied
 - No Data
 - Common area parcels in PUD's (open spaces, recreational facilities)
 - Government-owned, with or without buildings (federal, state, city, BART)
 - Industrial Vacant Land (not part of industrial park or P. and D.)
 - Miscellaneous improvements, 1 site
 - Multiple Vacant
 - Residential Vacant, 1 site (includes PUD sites)
 - Residential Vacant, unbuildable



KELLER BEACH LINE

F7SS1
Keller Beach
Pump Station