

ORDINANCE NO. 28-17 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 SCHOOL
USES IN CERTAIN ZONES**

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 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, there is a current and immediate threat to the public health, safety, and welfare if permits or entitlements for schools issue in certain commercial and mixed-use areas, and a moratorium is necessary to protect the public from potential negative health, safety and welfare impacts; 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 use permits, 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, to the extent that this urgency ordinance 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 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 December 19, 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. 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. The City Council hereby directs the Planning and Building Services Department to conduct outreach to the community and various stakeholders regarding zoning amendments relating to school uses in the City of Richmond; hold a City Council study session on this issue; and subsequently present proposed zoning amendments to the Planning Commission. The City Council further directs the Planning Commission to make a recommendation on those proposed zoning amendment for the City Council's consideration pursuant to Richmond Municipal Code Article 15.04.814.

SECTION 4. Until such time as the City concludes the review described above, and approves, modifies, or denies the proposed zoning amendments, the City of Richmond hereby declares a 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. School uses may continue to be approved in the following zones: RH, RL1, RL2, RM1, RM2, IB, and PCI.

Nothing herein prohibits the processing of applications. Any application received and processed during the moratorium shall be processed at the applicant's sole cost and risk with the understanding that no permit for a school in the above-listed zones may issue while this moratorium or any extension of it is in effect.

Nothing herein affects applications submitted prior to the effective date of this ordinance to modify existing schools if such modifications would not expand the school's overall capacity, develop a new parcel, or increase the number of school classrooms.

SECTION 5. For purposes of this ordinance, the following definitions shall apply: “School” shall mean facilities for primary or secondary education, including public schools, charter schools, and private and parochial 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 **December 19, 2017 through and including February 2, 2018**. 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 for a permit or entitlement that 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 City Manager 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 substantial evidence showing the basis of the application. The request shall be addressed to the City Manager. Within twenty-one days of receipt of the completed request for relief, the City Manager, or his or her designee, shall mail to the applicant the written determination accepting or rejecting the request for relief from the Moratorium. The determination of the City Manager, or his or her designee, shall be final and not appealable.

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.

I certify that the foregoing Ordinance was passed and adopted by the City Council of the City of Richmond at a regular meeting thereof held December 19, 2017, by the following vote:

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

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

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. 28-17 N.S.**, passed and adopted by the City Council of the City of Richmond at a regular meeting held on December 19, 2017.



Pamela Christian, City Clerk of the City of Richmond