

CHRISTIANA TIEDEMANN
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December 21, 2019

Hon. Mayor Butt and Members of the Council:

I am writing in support of the proposed amendments to the Richmond Municipal Code to prohibit new land uses and phase out existing land uses that involve the storage and handling of coal and petroleum coal in Richmond.

By way of introduction, I am a recently retired lawyer. Before my retirement I was Chief Counsel of the California Environmental Protection Agency. I also worked for over twenty years as a Supervising Deputy Attorney General in the Public Rights Division of the California Attorney General's Office. At the Attorney General's office, I represented state agencies in land use matters, including litigation of land use and regulatory takings cases at all levels of state and federal courts. I also served for 7 years as Mayor Bates' appointee to and the chair of the Berkeley Zoning Adjustments Board.

My support for the proposed RMC amendments stems from my work at CalEPA on environmental justice issues throughout California. At CalEPA, we relied on CalEnviroScreen to identify communities and areas in California that are disproportionately burdened by and especially vulnerable to multiple sources of pollution. These communities and areas are environmental justice "hotspots" that merit special attention and action by government officials and agencies to protect vulnerable residents from cumulative pollution burdens.

CalEnviroScreen identifies multiple areas of Richmond as environmental justice hotspots and identifies airborne particulate material as a significant source of the cumulative pollution burden on Richmond residents. The CalEnviroScreen hotspot identification, coupled with evidence from City residents of visible coal dust in and around their homes and reports from public health and medical professionals of the adverse human health effects of coal dust compel a "Yes" vote on the proposed RMC amendments.

Threats of litigation against the City if the amendments are adopted should not deter the Council from doing the right thing to protect residents' health and safety. While prudent government officials should certainly consider whether proposed action will survive judicial scrutiny, the mere threat of litigation should not be an impediment to making sound policy decisions or result in governmental paralysis. Instead, consideration should be given to the legality of the proposed action and the merits of any threatened litigation.

In the case of the proposed RMC amendments, the litigation threat against the City appears to be that the amendments will *unlawfully* terminate the existing coal storage and handling land use in Richmond. That threat has no merit. The proposed amendments are skillfully drafted to provide for a phase out of the existing coal land use, with ample time to convert to a cleaner use. The proposed amendments also provide a detailed administrative procedure to ensure that they will not result in an unconstitutional taking of any private property. Under these circumstances, a legal challenge will fail, and it should do so without protracted litigation because of the clear facial validity of the proposed amendments.

I urge the Council to do the right thing to protect the health and safety of Richmond residents and to adopt the proposed RMC coal amendments at its January 14 meeting.

Sincerely,

Christiana Tiedemann

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