

ORDINANCE NO. 05-20 N.S.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND
AMENDING THE MUNICIPAL CODE OF THE CITY OF RICHMOND BY ADDING
NEW ARTICLE
15.04.615 PROHIBITION OF THE STORAGE AND HANDLING OF COAL AND
PETROLEUM COKE, AND AMENDING SECTION 15.04.104.010 WAREHOUSING,
STORAGE, AND DISTRIBUTION DEFINITION**

WHEREAS, some communities in the City of Richmond are disadvantaged and disproportionately bear the burdens of health-related impacts caused by sources of pollution emitted by various industrial uses and other activities. The California Environmental Protection Agency has identified several census tracts within the City of Richmond as disadvantaged communities disproportionately burdened by and vulnerable to multiple sources of pollution; and

WHEREAS, uncovered coal and petroleum coke piles emit particulate matter (PM10) and fine particulate matter (PM2.5 or smaller) when exposed to wind. Fugitive particulate emissions can also occur when coal or petroleum coke is unloaded from trucks, ships, railroad cars or other containers to storage piles, or when coal or petroleum coke is transferred from storage piles to trucks, ships, railroad cars or other containers. Coal contains toxic heavy metals, including mercury, arsenic, and lead; and petroleum coke contains heavy metals and high levels of sulfur. Exposure to these toxic heavy metals is linked to cancer and birth defects; and

WHEREAS, coal is highly combustible, which poses risks to the health and safety of persons residing, working, or playing nearby, as well as to public safety personnel who would respond to coal fires. Coal fires at storage piles and shipping facilities are difficult to control, requiring fire personnel with specialized equipment and training. Toxic air pollutants released by coal fires would be similar to the toxic pollutants released by coal-fired power plants, but without treatment by emission control systems. Emissions from coal fires include fine particulate matter and metals, including mercury. Persons in close proximity to coal fires could experience both acute and chronic health impacts; and

WHEREAS, exposure to fine particulate pollution has been linked to increased deaths and illnesses due to cardiovascular and respiratory conditions. The World Health Organization and United States Environmental Protection Agency have linked particulate pollution, including from coal and petroleum coke, to significant health problems; and

WHEREAS, storing, loading, unloading, stockpiling, and/or otherwise handling coal and/or petroleum coke, temporarily or permanently, in the City of Richmond, is associated with and/or causes health and safety impacts in humans, including without limitation due to fugitive coal dust, which the American Lung Association considers to be a source of particulate matter that is dangerous to breathe, which the World Health Organization describes (including silica and asbestos) as responsible for most occupational diseases due to airborne particulates, and which results in dangerous health and safety conditions to the nearby population, as well as to workers and visitors in and near such facilities; and

WHEREAS, storing and/or handling coal and/or petroleum coke can negatively impact the environment, including because coal and petroleum coke dust and leachates can pollute waterways, often with long-lasting impacts, and impact and contaminate sensitive habitat within the City; and

WHEREAS, a 2017 study by the National Bureau of Economic Research has estimated that, in addition to the social costs of particulate pollution from burning coal, storage and handling creates PM2.5 pollution that generates additional local health costs of about \$183 per ton of coal stored; and

WHEREAS, City staff has received complaints from members of the community regarding fugitive coal dust from existing facilities that store and handle coal; and

WHEREAS, the City Council has already banned coal from City-owned marine terminal facilities, but there are currently no local regulations prohibiting coal or petroleum coke storage and handling at privately-owned facilities; and

WHEREAS, the City Council finds that the storage and handling of coal and petroleum coke is not a desired land use; and

WHEREAS, existing regulations are inadequate to address the health and environmental problems resulting from coal or petroleum coke storage and handling; and

WHEREAS, Article XI, Section 5 of the California Constitution provides that the City, as a home rule charter city, has the power to make and enforce all ordinances and regulations with respect to municipal affairs, and Article XI, Section 7, empowers the City to enact measures that protect and promote the health, safety, and/or welfare of its citizens; and

WHEREAS, Article II, Section 1, Paragraph 6 of the Charter of the City of Richmond states that the City shall have and exercise police powers, make all necessary police and sanitary regulations, and adopt ordinances and prescribe penalties for the violation thereof; and

WHEREAS, on July 18, 2019, the Planning Commission held a duly and properly noticed public hearing to consider a recommendation to the City Council on the proposed amendments to Chapter 15.04 of the Richmond Municipal Code, incorporated herein by reference; and

WHEREAS, the Planning Commission considered the agenda report, all public comments, and the proposed amendments to Chapter 15.04 as set forth in Exhibit A of this Ordinance and the applicable provisions of the Richmond Municipal Code (“the Record”) and voted to not recommend adoption of such ordinance; and

WHEREAS, on December 3, 2019, the City Council held a duly and properly noticed public hearing to consider the proposed amendments to Chapter 15.04 of the Richmond Municipal Code, incorporated herein by reference; and

WHEREAS, the City Council considered the agenda report, all public comments, and the proposed amendments and the applicable provisions of the Richmond Municipal Code (“the Record”); and

WHEREAS, the City Council finds and determines:

- 1) Pursuant to California Environmental Quality Act (“CEQA”) Guidelines § 15378 and California Public Resources Code § 21065, new Article 15.04.615 Prohibition of the Storage and Handling of Coal and Petroleum Coke, and amending Section 15.04.104.010 Warehousing, Storage, and Distribution definition are not a “project” because its adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment; and
- 2) Even if the amendments adding new Article 15.04.615 and amended Section 15.04.104.010 Warehousing, Storage, and Distribution definition qualified as a “project” subject to CEQA, and pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. The proposed ordinance amends the Richmond Municipal Code to regulate the future establishment of coal and petroleum coke storage and handling facilities and does not directly or indirectly authorize or approve any actual changes in the physical environment; and
- 3) The facts set forth in the recitals in this Ordinance are true and correct and incorporated by reference. The recitals constitute findings in this matter and, together with the agenda report, other written reports, public testimony and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in this Ordinance; and
- 4) New Article 15.04.615 and amended Section 15.04.104.010 Warehousing, Storage, and Distribution definition are consistent with the General Plan,

Richmond Municipal Code, and applicable State law; and

5) New Article 15.04.615 and amended Section 15.04.104.010 Warehousing, Storage, and Distribution definition will not be detrimental to the public interest, health, safety, convenience or welfare.

SECTION I. Municipal Code Amendments.

NOW THEREFORE BE IT RESOLVED, that the City Council hereby adopts an ordinance adding Article 15.04.615 and amending Section 15.04.104.010 (Amendments to Chapter 15.04) of the Richmond Municipal Code prohibiting the storage and handling of coal and petroleum coke, based on the following findings required per RMC Section 15.04.814.050:

A. The proposed amendment is consistent with the General Plan.

Supporting Statement of Fact: Criteria Satisfied. The proposed ordinance is consistent with and supports the goals outlined in the Health and Wellness Element of the City’s General Plan. For example, the ordinance supports Goal HW9: Improved Environmental Quality. Under this goal, the City shall “[c]ontinue to support projects that improve the quality of built and natural environments to support a thriving community and to reduce disparate health and environmental impacts, especially to low-income and disadvantaged communities. Clean air, water and soil, and a healthy eco-system are critical for human development and contribute to reduced toxic exposure, incidence of disease and environmental degradation.” The proposed ordinance supports this goal by reducing particulate matter emissions and toxic exposure, thus promoting clean air and reducing the pollution burdens borne disproportionately by individuals living and working near certain industrial areas.

B. The proposed amendment is necessary for public health, safety, and general welfare or will be of benefit to the public.

Supporting Statement of Fact: Criteria Satisfied. Particulate matter, including from coal and petroleum coke, has long been linked to significant adverse health effects in adults and children.¹ Particles that are PM₁₀ or smaller are of particular concern, because particles of that size may enter the lungs.² Numerous governmental and public health organizations—including the World Health Organization and the U.S. Environmental Protection Agency—have concluded that coal- and petroleum-coke-related particulate pollution can cause serious respiratory conditions.³ In studying the health effects of particulates linked to coal and petroleum coke, the South Coast Air Quality Management District (“SCAQMD”) staff found a relationship between daily levels of PM₁₀ and acute respiratory hospital admissions for children. Further, SCAMQD staff found that “each 10 micrograms per cubic meter increase of PM₁₀ is correlated with a 2-3% increase in asthma.”⁴ Particulate pollution from coal and petroleum coke can also have significant cardiovascular health impacts. The American Heart Association issued a statement in 2010 concluding that exposure to PM_{2.5} or smaller over a few weeks could increase the risks of death from cardiovascular disease. Exposure of longer duration increases the risk more significantly, and can reduce life expectancies by up to several years.⁵ Studies have also found that particulate pollution, including pollution related to coal, has led to increased mortality rates and high environmental and health costs. In one study, researchers concluded that a 10% increase in PM_{2.5} pollution led to a 1.1% increase in average adult mortality rates and a 6.6% increase in average infant mortality rates.⁶ That study estimated, based on those figures, that the environmental costs of storing one ton of coal was \$183—more than four times the average price a power plant paid for coal at the time of the study. Coal and petroleum

¹ Joel Schwartz, et al., Abstract: *Health effects of outdoor air pollution* (1996).

² EPA, *Health Effects of Petroleum Coke*.

³ Tim Driscoll et al., World Health Organization, *Occupational airborne particulates* (2004); U.S. EPA, *Health and Environmental Effects of Particulate Matter*.

⁴ SCAQMD, Staff Report for Proposed Amended Rule 1158 – Storage, Handling and Transport of Coke, Coal and Sulfur (1999).

⁵ Robert Brook, et al., *Particulate Matter Air Pollution and Cardiovascular Disease: An Update to the Scientific Statement from the American Heart Association* (2010).

⁶ Akshaya Jha & Nicholas Muller.

coke exports through the City of Richmond have dramatically increased in the past few years. Most, if not all, of this exports pass through the Levin-Richmond Terminal. The City has received complaints from residents that live near the Levin-Richmond Terminal about coal dust collecting on homes and nearby streets. The proposed ordinance is necessary for public health and safety as it will reduce particulate matter emissions and toxic exposure from coal and petroleum coke storage, thus promoting clean air and reducing the pollution burdens borne disproportionately by individuals living and working near certain industrial areas.

C. The proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.

Supporting Statement of Fact: *Criteria Satisfied.* The proposed ordinance is exempt from the California Environmental Quality Act (“CEQA”). First, it is not a Project under CEQA and is therefore exempt pursuant to CEQA Guidelines section 15378. Second, it is exempt from CEQA pursuant to CEQA Guidelines sections 15307 (action to protect natural resources), 15308 (action to protect the environment), and/or 15061(b)(3) (“Common Sense” exemption where there is no reasonable possibility of a significant effect on the environment).

D. For a change to the Zoning Maps, that the subject property is suitable for the uses permitted in the proposed zone in terms of access, size of parcel, relationship to similar or related uses, and other relevant considerations, and that the proposed change of zoning district is not detrimental to the use of adjacent properties.

Supporting Statement of Fact: *Criteria Satisfied.* The proposed amendments do not involve a zoning map change. The Zoning Amendments are only changes to the Zoning Ordinance text.

SECTION II. The City Council of the City of Richmond does ordain as follows: Adds Article 15.04.615 and amends Section 15.04.104.010 of the Richmond Municipal Code prohibiting the storage and handling of coal and petroleum coke, attached to this Ordinance as Exhibit A, incorporated herein by reference.

SECTION III. Severability.

If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid, the remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed each section, subsection, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, paragraph, sentence, clause or phrase.

SECTION IV. Effective Date.

All applications filed after or pending upon the date of final passage and adoption of this Ordinance shall be subject to this Ordinance. This Ordinance becomes effective thirty (30) days after its final passage and adoption.

First introduced at a regular meeting of the City Council of the City of Richmond held January 21, 2020, and finally passed and adopted at a regular meeting held February 4, 2020, by the following vote:

AYES: Councilmembers Choi, Johnson III, Martinez, Myrick, Willis, Vice Mayor Bates, 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. 05-20 N.S.** passed and adopted by the City Council of the City of Richmond at a regular meeting held on February 4, 2020.



Pamela Christian, City Clerk of the City of Richmond

EXHIBIT A

Article 15.04.615 PROHIBITION OF THE STORAGE AND HANDLING OF COAL AND PETROLEUM COKE

15.04.615.010 Purpose

- A. This Article is intended to protect and promote the health, safety, and welfare of the City's citizens, visitors, and workers by reducing the release of pollutants into the environment as a result of coal and petroleum coke storage and handling. This Article is also intended to reduce the public health, safety, or welfare impacts (including, without limitation, adverse impacts to property values, aesthetics, and economic interests) caused by the storage and handling of coal and petroleum coke.
- B. This Article bans the establishment and/or expansion of storage and handling of coal and/or petroleum coke throughout the City of Richmond, with certain exceptions. The Article also phases out existing allowed uses of land involving the storage and handling of coal and petroleum coke, by providing a three-year amortization period for such existing allowed uses to transition to other lawful uses and materials. This amortization period is intended to strike a proper balance between protecting the public from the health hazards of coal and petroleum coke storage and handling, while also protecting existing jobs and providing sufficient time for businesses to transition.
- C. This Article is not intended to, and shall not be interpreted to regulate or applied to prohibit the transportation of coal and/or petroleum coke, for example, by train or marine vessel, including without limitation through the City of Richmond or to or from a coal or petroleum coke storage and handling facility.

15.04.615.020 Definitions

As used in this Article, the following terms have the following meanings:

- A. "Coal" means a solid, brittle, carbonaceous rock classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials ("ASTM") Designation D388-77.
- B. "Petroleum Coke" means a solid carbonaceous residue produced from a coker after cracking and distillation from petroleum refining operations, including such residues produced by petroleum upgraders in addition to petroleum refining.
- C. "Coal or Petroleum Coke Storage and Handling Facility" means an existing or proposed site or facility, including all contiguous land, structures, other appurtenances, and improvements thereon, or any part thereof, where coal or petroleum coke is or may be stored or handled.

- D. "Effective Date" means the date that Ordinance No. 05-20 N.S, adding Article 15.04.615 to the Richmond Municipal Code, took effect.
- E. "Owner or Operator" means any person who has legal title to any coal or petroleum coke storage and handling facility; who has charge, care, or control of any coal or petroleum coke storage and handling facility; who is in possession of any coal or petroleum coke storage and handling facility or any part thereof; and/or who is entitled to control or direct the management of any coal or petroleum coke storage and handling facility.
- F. "Store or Handle, or Storing or Handling, or Storage or Handling," means to allow or maintain any pile, including without limitation covered and uncovered piles, piles located above ground, underground, or within containers, or to load, unload, stockpile, or otherwise handle and/or manage, temporarily or permanently, coal and/or petroleum coke.

15.04.615.030 Prohibition on storage and/or handling of coal or petroleum coke

The storage and handling of coal and petroleum coke at a coal or petroleum coke storage and handling facility is prohibited in all zoning districts.

15.04.615.040 Exemptions

The following non-commercial uses are exempt from the provisions of this Article 15.04.615: residential, educational, scientific, recreational, religious, or cultural uses in which persons store or handle small amounts of coal or petroleum coke.

15.04.615.050 Amortization Period for Nonconforming Uses

- A. Notwithstanding any provision in this Code to the contrary, this Section shall apply to all existing land uses that do not conform with the requirements of Section 15.04.615.030 of this Code as of the effective date.
- B. As used in this Section, "nonconforming land use" means any lawful coal or petroleum coke storage and handling facility in existence prior to the effective date.
- C. Except as otherwise provided in this Section, all nonconforming land uses shall be discontinued within three years after the effective date. The three-year period after the effective date shall be referred to as the "amortization period."
- D. Nonconforming land uses shall not increase the amount of coal or petroleum coke stored or handled in a calendar year beyond the average amount of coal or petroleum coke stored or handled annually at the coal or petroleum coke storage and handling facility in the three years prior to the effective date. Nonconforming

land uses shall not expand the footprint of coal or petroleum coke storage or handling activities at the coal or petroleum coke storage and handling facility.

- E. Within two months of the effective date, the Zoning Administrator shall use reasonable efforts to identify and provide notice to all owners or operators of any coal or petroleum coke storage and handling facility informing them that they must do either of the following: (a) discontinue any nonconforming land use before the conclusion of the amortization period; or (b) apply for an extension of the amortization period pursuant to sub-section F of this Section. Failure to receive notice from the Zoning Administrator shall not excuse an owner or operator from compliance with the provisions of this Section.
- F. Any affected owner or operator of a nonconforming land use may apply to the Planning Commission for an extension of the amortization period on a form provided by the Director pursuant to Section 15.04.803.020. The affected owner or operator shall pay any applicable fees established pursuant to that Section. Applications for an extension of the amortization period shall be submitted no later than 12 months prior to the end of the amortization period. The Planning Commission shall conduct a duly noticed public hearing to consider the application for extension of the amortization period within a reasonable time after the application has been deemed complete by the Zoning Administrator.
1. "Limited Notice (Type B)" shall be provided pursuant to Section 15.04.803.070 of this Code not less than 24 calendar days prior to the date of the hearing.
 2. In deciding whether to extend the amortization period, the Planning Commission shall consider all documentary and oral evidence and testimony submitted prior to the conclusion of the hearing. As part of the application, an amortization analysis shall be prepared, at the applicant's expense, by an expert retained by the City, prior to Planning Commission consideration.
 3. The Planning Commission shall grant an extension of the amortization period if it finds, based on substantial evidence, that such extension is necessary to prevent an unconstitutional taking of property without compensation or to avoid a violation of state or federal law. Any extension so granted shall be the minimum necessary to prevent such impairment or violation. In no event shall the Planning Commission grant any extension if it finds that continuing the nonconforming land use would constitute a public nuisance under Civil Code sections 3479 and 3480.
 4. The Planning Commission's decision shall be based upon the following factors, where applicable:

- a. The cost to the applicant of acquiring the affected property and the applicant's reasonable investment-backed expectations at the time the property was acquired;
 - b. The present actual or depreciated value of the affected property and improvements with and without the nonconforming land use;
 - c. The total length of time the nonconforming land use has existed and the remaining useful life of the nonconforming land use;
 - d. The applicant's investments in the nonconforming land use and whether and to what extent the applicant will have recouped those investments before the conclusion of the amortization period;
 - e. The salvage value of any improvements that may be used for purposes other than the nonconforming land use;
 - f. The remaining value and allowed uses of the property after discontinuing the nonconforming land use;
 - g. Whether the nonconforming land use interferes with the use and enjoyment of land of nearby property owners or residents, or interferes with or threatens the public health, safety, and welfare of the community;
 - h. The extent to which the nonconforming land use on the property is incompatible with surrounding uses and properties; and
 - i. Any other factor the Planning Commission reasonably determines is related to determining whether the investment in the nonconforming land use has been recovered.
5. The owner or operator requesting the extension shall have the burden of demonstrating that it is entitled to an extension under sub-section F above. The Planning Commission's determination under this sub-section may be appealed to the City Council in the same manner as prescribed in Section 15.04.803.140 of this Code.

K. Nothing in this Section is intended to affect or restrict the City's authority to immediately terminate, discontinue, or abate any land uses found to be a nuisance, or that are otherwise operating unlawfully, including a nonconforming land use. This Article does not create or confer any vested rights.

15.04.615.060 Violations; Declaration of a Nuisance; Abatement

Any land use that fails to comply with or violates any provision of this Article is hereby declared to be an unlawful nuisance. Any land use declared to be a nuisance pursuant to this Section may be subject to the abatement procedures established in Section 15.04.815.040 and Chapter 9.22 of this Code.

15.04.615.070 Exceptions; Procedures

A. The provisions of this Article shall not be applicable to the extent, but only to the extent, that they would violate the constitution or laws of the United States or of the State of California.

- B. In the event a property owner contends that the application of this Article effects an unconstitutional taking of property without compensation, the property owner may request, and the Planning Commission shall grant, an exception to application of any provision of the Article if the Planning Commission finds, based on substantial evidence, that both (1) the application of any aspect of the Article would constitute an unconstitutional taking of property, and (2) the exception will allow continued land uses only to the minimum extent necessary to avoid such a taking; provided, however, that in the case of nonconforming uses, the procedures set forth in Section 15.04.615.050.F shall govern. The property owner shall have the burden of demonstrating that it is entitled to an exception under this sub-section. The Planning Commission's determination under this sub-section may be appealed to the City Council in the same manner as prescribed in Section 15.04.803.140 of this Code.

15.04.615.080 Non-applicability to Transportation of Coal and/or Petroleum Coke

Notwithstanding anything to the contrary contained in this Article, this Article is not intended to and shall not be interpreted to regulate the transportation of coal and/or petroleum coke, for example, by train or marine vessel, including without limitation through the City of Richmond or to or from a coal or petroleum coke storage and handling facility.

15.04.615.090 Conflicting Provisions

Where a conflict exists between the requirements in this Article and applicable requirements contained in other provisions of this Code, the applicable requirements of this Article shall prevail.

Known Conforming Amendments to Richmond Municipal Code

Section 15.04.104.010 of the Richmond Municipal Code is hereby amended, in pertinent part, as follows (added text shown in underline):

Chemical, Mineral, and Explosives Storage. Storage and handling of hazardous materials including but not limited to: bottled gas, chemicals, minerals and ores, petroleum or petroleum-based fuels, fireworks, and explosives. Notwithstanding the foregoing sentence, the storage and handling of coal and petroleum coke is prohibited in accordance with Article 15.04.615 to the Richmond Municipal Code, except as expressly provided therein.