

ORDINANCE NO. 24-09 N.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND AMENDING RICHMOND MUNICIPAL CODE CHAPTER 15.04 OF THE ZONING ORDINANCE TO ADDRESS BIODIESEL RELATED LAND USES.

WHEREAS, it is the intent of the Richmond City Council to consider and adopt new zoning regulations pertaining to biodiesel facilities in order to provide clear, consistent, and uniform guidance to biodiesel providers regarding the siting and design of biodiesel facilities, while also addressing community concerns, and to better reflect the City's siting and regulatory objectives for biodiesel facilities, consistent with those of petroleum fuels; and

WHEREAS, the City of Richmond has committed to achieving the greenhouse gas emission reduction targets established by AB 32:

- 2000 GHG emissions levels by 2010,
- 1990 GHG emissions levels by 2020,
- 80 percent below 1990 levels by 2050; and

WHEREAS, the City of Richmond has committed to reducing transportation related criteria air pollutant emissions and improving the City's air quality index by signing the Urban Environmental Accords; and

WHEREAS, the City of Richmond is an active member in the East Bay Green Corridor Partnership (along with the cities of Berkeley, Emeryville and Oakland, the University of California, Berkeley, and the Lawrence Berkeley National Laboratory) which strives to make the East Bay a center of environmental innovation, emerging green business industry, green jobs, and renewable energy; and

WHEREAS, the use of biodiesel in internal combustion automotive vehicles might, under some special circumstances, reduce the emission of climate altering gases and other pollutants in a one-to-one comparison with petroleum-based fuels (especially when those petroleum-based fuels come from non-domestic sources) without inflicting significant secondary social, economic and/or environmental impacts along the chain of production, refinement and distribution; and

WHEREAS, the City's current regulations do not specifically address biodiesel use, storage, manufacturing and refining, and other aspects of use, including, but not limited to the following: a) they do not clearly define biodiesel; b) they do not clearly identify appropriate zoning districts for biodiesel storage, distribution, and manufacturing, refining; c) they do not include clear standards for environmental analysis and permitting process for biodiesel storage and distribution, manufacturing and refining, and retail sales; and, d) they do not specifically address these fuels as hazardous materials; and

WHEREAS, on May 20, 2008, at a duly noticed public hearing, the City Council directed staff to meet with members of the industrial and business communities and to amend the City's existing Zoning Ordinance related to biodiesel. Several meetings have been held with the business and industrial communities, and input from those meetings has been considered in the preparation of this ordinance and regulations for biodiesel; and

WHEREAS, the City Council finds the zoning text amendment to be Categorically Exempt pursuant to the California Environmental Quality Act (CEQA) Guideline 15061(b)(3). The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that the text amendment to the Zoning Ordinance may have a significant effect on the environment as the amendment is in accordance with the objectives of the General Plan; will protect the health, safety, morals, comfort, convenience and general welfare of the public by providing regulation and criteria for the regulation of the biodiesel industry in the City of Richmond; will promote orderly development of commercial and industrial areas; and will provide for more clear, concise and effective administration of the Zoning Ordinance; and

WHEREAS, based on facts presented before and during the duly noticed public meeting to consider this Ordinance, the Council makes the following findings:

Finding 1. There is one, or more, of the following conditions present that justifies a change in the zoning districts.

- a) Land utilization has developed differently as to timing, location or in the manner of land development than originally anticipated.
- b) Changes have arisen from forces extraneous to the community.
- c) Changes have occurred caused by increased population or some other form of more intensive land utilization which has created an imbalance between land uses.
- d) Changes have occurred in governmental development policies (which will also mean changes in the General Plan).

Statement of Facts: Criteria satisfied with conditions (b) and (d) being present. The use of biodiesel has significantly risen in popularity during the last decade. The United States Environmental Protection Agency, as well as state and local agencies have begun to support biodiesel as a "green" energy and sustainable alternative to traditional petroleum based fuel. The current City of Richmond General Plan, Zoning Ordinance and land use definitions do not adequately describe a clear set of policies for this fairly new use and industry. To address changing demands on land use, a revision to the Zoning Ordinance is necessary.

Finding 2. The amendment:

- a) Is in accord with the objectives of the General Plan;
- b) Will protect the public health, safety, morals, comfort, convenience and general welfare;

- c) Will promote orderly development of residential, business, industrial, recreational and public areas;
- d) Will provide for more effective administration of the Zoning Ordinance.

Statement of Facts: Criteria a through d are satisfied. The proposed zoning text amendment will further the goals of the General Plan by providing areas for heavy industrial and marine industrial uses that are attractive, well maintained and have convenient access (Goal LU-O), and by increasing the number of new permanent private sector industrial jobs available to City residents (Goal LU-P). Goal ED-G states that the City of Richmond shall retain and encourage upgrading and expansion of existing industrial development and Goal ED-H is to increase and accelerate new industrial development in Richmond. This amendment to the Zoning Ordinance will promote General Plan Goal ED-H.1 by encouraging the development of lands designated in the Land Use Element for industry, while recognizing the need for buffering adjacent commercial and residential uses. The amendment will also promote Goal SF-B, which is to minimize the risks to people, property and the environment due to fire hazards and use and storage of hazardous materials. The amendment will promote orderly development by adhering to goal LU-B, which is to achieve a pleasant transition between residential, industrial, and commercial area. The amendment will clarify the environmental analysis and permitting process for biodiesel in order to provide a more effective administration of the City of Richmond Zoning Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RICHMOND does ordain as follows:

SECTION 1. Richmond Municipal Code Section 15.04.020, **Definitions** is hereby amended by adding the following terms to the list of definitions, in alphabetical order (~~strikeout text~~ indicates deletion; underline text indicates insertion):

Automobile Service Station – means any business or premises engaged in the sale of gasoline and other ~~petroleum~~ fuel products, including biofuel and biodiesel, and/or light maintenance activities such as engine tune-up, lubrication and minor repairs. Service stations shall not include premises where heavy automobile maintenance activities such as engine overhauls, automobile painting, body fender work or storage for more than a 24 hour period are conducted.

Biodiesel – A fuel comprised of mono-alkyl esters of long fatty acids derived from vegetable oils or animal fats, designated B100, and meeting the requirements of ASTM D 6751 or, for biodiesel to be shipped outside of United States, the specification for biodiesel fuel commonly used in the country where it will be shipped for use as fuel or blend stock. “Biodiesel facilities” refer to any site or building used for the refinement, production, storage or distribution of biodiesel, first generation biofuel, second generation biodiesel, or third generation biodiesel as defined below.

Biofuel – A fuel (if cultivated, then also called agrofuel or agrifuel) which is broadly defined as solid, liquid, or gas fuel consisting of or derived from recently dead biological material, most commonly plants. A. First generation biofuels” refer to biofuels made from sugar, starch, vegetable oil, or animal fats using conventional technology. The most common first generation biofuels are: 1) Vegetable oil; 2) Biodiesel; 3) Bioalcohols; 4) Biogas; 5) Solid biofuels such as wood, grass cuttings, domestic refuse, charcoal and dried manure; 6) Syngas. B. “Second generation biofuels” refer to biofuels made from a variety of non-food crops, including waste biomass, the stalks of wheat, corn, wood, and special energy-or-mass crops (i.e. Miscanthus). C. “Third generation biofuels” refer to biofuels derived from algae. D. “Biofuel facilities” refer to any site or building used for the refinement, production, storage or distribution of biofuels, first generation biofuel, second generation biofuels, or third generation biofuels as defined above.

SECTION 2. Section 15.04.330.040, **M-3 Heavy Industrial District**, of Chapter 15.04 of the Zoning Ordinance of the City of Richmond Municipal Code is hereby amended by modifying the following to the list of Industrial Uses under Conditional Uses:

Industrial Uses

Biodiesel and related industries storage and distribution

Manufacturing

Petroleum refining and related industries:

Petroleum refining

Biodiesel refining and related industries

SECTION 3. Section 15.04.340.020, **M-4 Marine Industrial District**, of Chapter 15.04 of the Zoning Ordinance of the City of Richmond Municipal Code is hereby amended by modifying the following to the list of Industrial Uses under Permitted Uses:

Industrial Uses

Port/marine terminal (including petroleum, biodiesel and related industries storage facilities)

and Section 15.04.340.040, to the list of Industrial Uses under Conditional Uses:

Industrial Uses

Biodiesel and related industries storage and distribution

Manufacturing

Biodiesel refining and related industries

SECTION 4. Section 15.04.910.080, **Requirements for Specific Uses or Districts** of Chapter 15.04 of the Zoning Ordinance of the City of Richmond

Municipal is hereby amended by adding the following to the list of requirements for Specific Uses:

O. Biodiesel Facilities

1. Storage, Distribution

- a. Automobile Service stations and existing facilities with petroleum fueling services are exempt from the following conditions
- b. The permittee shall obtain all of the following permits, proofs-of-exemption, and approvals:
 - (i) A Spill Prevention, Control and Countermeasure Plan (SPCC) approved by the Environmental Protection Agency (EPA).
 - (ii) Permits to construct and to operate from the Bay Area Air Quality Management District (BAAQMD), or documentation that the facility is exempt from BAAQMD's permitting requirements.
 - (iii) An industrial discharge permit from the City of Richmond Wastewater Division, or documentation that the facility is exempt from the Wastewater Division's permitting requirement
 - (iv) A permit from the state or local Fire Marshall for the storage and use of combustible liquids.
 - (v) Permits for all storage tanks (above-ground and underground) from the state or local Fire Marshall.
 - (vi) A solid waste permit from the Contra Costa Health Services Department of Environmental Health, if applicable.
 - (vii) A permit from the San Francisco Bay Conservation Development Committee (BCDC) if the proposed project is within 100 feet of the shoreline.
 - (viii) A Hazardous Materials Safety Permit from the United States Department of Transportation (USDOT) or California Department of Transportation (CalTrans) if the permittee will be transporting hazardous materials over public streets and highways.
 - (ix) A seller's permit from the California Board of Equalization.
- c. The permittee shall follow the most up-to-date version of Biodiesel Handling and Use Guide prepared by the U.S. Department of Energy National Renewable Energy Laboratory.
- d. The permittee shall comply with the California Regional Water Quality Control Boards' C.3 Stormwater Control Management requirements.
- e. The permittee shall inspect incoming oil and grease to ensure that it is free of hazardous waste.
- f. Oil and grease waste shall not be mixed with other types of solid wastes, including hazardous waste, special handling waste, or municipal waste.

- g. Oil and grease shall not be stored for more than forty-five days.
- h. The permittee is responsible for the proper storage and management of oil and grease waste to ensure the following:
 - (i) All measures necessary to minimize and control the presence of vectors shall be taken;
 - (ii) If vectors are present, measures necessary to exterminate them shall be taken immediately; and
 - (iii) Odors will not cause a nuisance to neighboring properties.
- i. Equipment must be inspected and monitored during waste processing activities to ensure that equipment operates properly to prevent spillage or release of oil, and grease waste, and biodiesel, or other materials resulting from the processing activities.
- j. In the event of a spill or release of oil and grease waste, biofuel, including biodiesel, or any other materials resulting from processing, the permittee shall take appropriate immediate action to protect the health and safety of the public and the environment. The following spills and releases of oil and grease, waste, biofuel, including biodiesel, or any residue from processing must immediately be reported to the Contra Costa County Hazardous Materials program; the City of Richmond Fire Department; and, the Department of Toxic Substances Control:
 - (i) A report of the discharge information, including where the spilled or released amount of oil and grease waste, biofuel, including biodiesel, or any residue from processing exceeds five gallons or,
 - (ii) A detailed account of the amount of discharge of oil and grease waste, biofuel, including biodiesel, or any residue from processing, regardless of the volume where the discharge may reach surface waters.
- k. The permittee shall maintain at the permitted facility an updated copy of an Emergency Preparedness, Prevention Plan for the facility prepared in accordance with the most recent guidelines from the California Department of Toxic Substances Control. The Emergency Preparedness, Prevention Plan shall be updated at least once every five (5) years or if changes in contact information, equipment, or regulatory requirements occur.
- l. Upon cessation of operations at the facility, the permittee shall comply with closure requirements of the California Department of Toxic Substances Control.
- m. The permittee shall immediately notify the Richmond Planning and Building Services Department in writing of any changes in: the company name, address, owners, operators and responsible officials; land ownership and the right to enter and operate on any land occupied by a facility; the system used to

process waste; and the status of any permit issued by local, state, or federal government agencies.

- n. Failure to comply with the terms and conditions of this permit shall be grounds for the revocation or suspension of the permit pursuant to Richmond Municipal Code Section 15.04.990.

2. Refining and Manufacturing

- a. A facility shall not be located:

- (i) Within 500 feet of a pre-school, elementary school, junior high school, middle school or high school; colleges, universities, or other educational facilities (except Vocational School);
- (ii) Within 500 feet of a child-care center, park or playground;
- (iii) Within 500 feet of a residentially zoned district; or
- (iv) Within 500 feet of a hospital or ambulatory care facility

- b. The permittee shall obtain all of the following permits, proofs-of-exemption, and approvals:

- (i) A Spill Prevention, Control and Countermeasure Plan (SPCC) approved by the Environmental Protection Agency (EPA).
- (ii) Permits to construct and to operate from the Bay Area Air Quality Management District (BAAQMD), or documentation that the facility is exempt from BAAQMD's permitting requirements.
- (iii) An industrial discharge permit from the City of Richmond Wastewater Division, or documentation that the facility is exempt from the Wastewater Division's permitting requirement
- (iv) A permit from the state or local Fire Marshall for the storage and use of combustible liquids.
- (v) Permits for all storage tanks (above-ground and underground) from the state or local Fire Marshall.
- (vi) A solid waste permit from the Contra Costa Health Services Department of Environmental Health, if applicable.
- (vii) A permit from the San Francisco Bay Conservation Development Committee (BCDC) if the proposed project is within 100 feet of the shoreline.
- (viii) A Hazardous Materials Safety Permit from the United States Department of Transportation (USDOT) or California Department of Transportation (CalTrans) if the permittee will be transporting hazardous materials over public streets and highways.
- (ix) A seller's permit from the California Board of Equalization.

- c. The permittee shall follow the most up-to-date version of Biodiesel Handling and Use Guide prepared by the U.S. Department of Energy National Renewable Energy Laboratory.

- d. The permittee shall comply with the California Regional Water Quality Control Boards' C.3 Stormwater Control Management requirements.
- e. The permittee shall inspect incoming oil and grease to ensure that it is free of hazardous waste.
- f. Oil and grease waste shall not be mixed with other types of solid wastes, including hazardous waste, special handling waste, or municipal waste.
- g. Oil and grease shall not be stored for more than forty-five days.
- h. The permittee is responsible for the proper storage and management of oil and grease waste to ensure the following:
 - (i) All measures necessary to minimize and control the presence of vectors shall be taken;
 - (ii) If vectors are present, measures necessary to exterminate them shall be taken immediately; and
 - (iii) Odors will not cause a nuisance to neighboring properties.
- i. Equipment must be inspected and monitored during waste processing activities to ensure that equipment operates properly to prevent spillage or release of oil, and grease waste, and biodiesel, or other materials resulting from the processing activities.
- j. In the event of a spill or release of oil and grease waste, biofuel, including biodiesel, or any other materials resulting from processing, the permittee shall take appropriate immediate action to protect the health and safety of the public and the environment. The following spills and releases of oil and grease, waste, biofuel, including biodiesel, or any residue from processing must immediately be reported to the Contra Costa County Hazardous Materials program; the City of Richmond Fire Department; and, the Department of Toxic Substances Control:
 - (i) A report of the discharge information, including where the spilled or released amount of oil and grease waste, biofuel, including biodiesel, or any residue from processing exceeds five gallons or,
 - (ii) A detailed account of the amount of discharge of oil and grease waste, biofuel, including biodiesel, or any residue from processing, regardless of the volume where the discharge may reach surface waters.
- k. The permittee shall maintain at the permitted facility an updated copy of an Emergency Preparedness, Prevention Plan for the facility prepared in accordance with the most recent guidelines from the California Department of Toxic Substances Control. The Emergency Preparedness, Prevention Plan shall be updated at least once every five (5) years or if changes in contact information, equipment, or regulatory requirements occur.

- l. Upon cessation of operations at the facility, the permittee shall comply with closure requirements of the California Department of Toxic Substances Control.
- m. Biofuel produced by the permittee is no longer waste provided it meets one of the following specifications:
 - (i) B100 in ASTM D 6751 (Standard Specification for Biodiesel Fuel (8100) Blend Stock for Distillate Fuels), or
 - (ii) Biodiesel fuel commonly used in the country where it will be shipped for use as fuel or blend stock, or
 - (iii) ASTM D 396 (Standard Specification for Fuel Oils) , or
 - (iv) Specifications required by the combustion device in which it will be used.
- n. Glycerin produced by the permittee is no longer a waste provided it is not accumulated speculatively and meets the specification in ASTM D 1257 (Standard Specification for High-Gravity Glycerin), or is shipped to a manufacturer for conversion into glycerin that will meet the specification in ASTM D 1257. (Note: Any glycerin produced by the permittee and used as an ingredient in a manufacturing process, such as in soap or cosmetic production, is not waste under the definition of “waste” in Chapter 15.04.820.022 Definitions of the Richmond Zoning Ordinance, provided it is not accumulated speculatively.)
- o. The permittee shall immediately notify the Richmond Planning and Building Services Department in writing of any changes in: the company name, address, owners, operators and responsible officials; land ownership and the right to enter and operate on any land occupied by a facility; the system used to process waste; and the status of any permit issued by local, state, or federal government agencies.
- p. Failure to comply with the terms and conditions of this permit shall be grounds for the revocation or suspension of the permit pursuant to Richmond Municipal Code Section 15.04.990.

SECTION 5. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

SECTION 6. Effective Date.

This Ordinance becomes effective 30 days after its final reading and adoption. All existing businesses are required to comply with this Ordinance within 180 days after its final reading and adoption. Failure to do so, could subject the business owner to penalties and/or fines as described in section 15.04.950.020 Penalty/Injunctive Relief of the Richmond Municipal Code.

First reading at a regular meeting of the City of Richmond City Council held on July 7, 2009, and finally passed and adopted at a regular meeting thereof held on **July 21, 2009**, by the following vote:

- AYES: Councilmembers Bates, Butt, Ritterman, Rogers, Viramontes, Vice Mayor Lopez, and Mayor McLaughlin
- NOES: None.
- ABSTENTIONS: None.
- ABSENT: None.

DIANE HOLMES
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

GAYLE McLAUGHLIN
Mayor

Approved as to form:

RANDY RIDDLE
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. 24-09 N.S., finally passed and adopted by the Council of the City of Richmond at a regular meeting on July 21, 2009.