



CITY COUNCIL

AGENDA REPORT

DATE: December 18, 2018

TO: Mayor Butt and Members of the City Council

FROM: Councilmember Martinez

SUBJECT: ORDINANCE PROHIBITING THE STORAGE AND HANDLING OF COAL AND PETROLIUM COKE

STATEMENT OF THE ISSUE:

The California Environmental Protection Agency has identified various census tracts within the City of Richmond as disadvantaged communities disproportionately burdened by and vulnerable to multiple sources of pollution. The World Health Organization and the United States Environmental Protection Agency have linked particulate pollution, including from coal and pet coke, to significant health problems. The storing, loading, unloading, stockpiling, and/or otherwise handling of coal and pet coke, temporarily or permanently, at facilities 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. The World Health Organization describes (including silica and asbestos) as responsible for most occupational diseases due to airborne particulate, which results in dangerous health and safety conditions to the nearby population, as well as to workers and visitors in and near such facilities. Our waterways are also impacted by fugitive dust from coal and pet coke.

At a time in which the use of fossil fuels are overloading our ability to control climate change, we must not only protect the health of our community but also the health of our planet.

RECOMMENDED ACTION:

DIRECT staff to review a draft ordinance for legality and language and craft an ordinance for a first reading that is as strong or stronger in its ability to protect our community from coal and petroleum coke. (Councilmember Eduardo Martinez, 620-6593)

FINANCIAL IMPACT OF RECOMMENDATION:

There is no financial impact related to this item.

DISCUSSION:

Levin-Richmond is a major shipping terminal that handles hundreds of thousands of tons of toxic materials on the Richmond Channel. They have had a major increase of the amount of coal and petroleum coke (petcoke) exportation increasing the amount of fugitive coal and petcoke dust which has been proven to be dangerous to health. In 2014 San Francisco Baykeeper was able to secure an agreement with the Levin-Richmond Terminal Corporation to reduce runoff pollution. Air pollution continues to be an issue as reported by community members who live nearby. In October of 2016 the City of Richmond adopted a Climate Action Plan which stated as one of its goals under "Greenhouse Gas Emissions Reduction" lists "Reduce coal burning in city, state, country, and world". With this objective in mind, it follows that we should do all that is possible to limit the amount of fugitive coal and petcoke dust and reduce the burning of aforementioned items.

It is within the jurisdiction of the city to regulate land use and this ordinance is designed to protect the community and the environment from the dangers stemming from the storage and handling of coal and petcoke.

DOCUMENTS ATTACHED:

Draft Ordinance

ORDINANCE NO. _____ - __

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND,
CALIFORNIA, ADDING CHAPTER 15.XX TO THE RICHMOND MUNICIPAL CODE
PROHIBITING THE STORAGE AND HANDLING OF COAL AND PETCOKE**

The City Council of the City of Richmond hereby finds and declares as follows:

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

WHEREAS, uncovered coal and pet coke piles emit fine particulate pollution, PM2.5 or smaller, when exposed to wind. Fugitive particulate emissions can also occur when coal or pet coke is unloaded from trucks or railroad cars to storage piles, or when coal and pet coke is transferred from storage piles to ships. Coal contains toxic heavy metals, including mercury, arsenic, and lead and petcoke contains high levels of sulphur and heavy metals. Exposure to these toxic heavy metals is linked to cancer and birth defects.

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.

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 pet coke, to significant health problems.

WHEREAS, storing, loading, unloading, stockpiling, and/or otherwise handling coal and pet coke, temporarily or permanently, at facilities 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 particulate, 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.

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

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 and pet coke, storage and handling creates PM2.5 pollution that generates additional local health costs of about \$183 per ton of coal and pet coke stored.

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

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

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.

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.

WHEREAS, on **DATE**, 20**XX**, the Council held a public hearing to consider adoption of the proposed ordinance of the City Council of the City of Richmond, California, adding Chapter 15.**XX** to the Richmond Municipal Code prohibiting the storage and handling of coal.

WHEREAS, at that **DATE**, 20**XX**, meeting, the City Council adopted Resolution No. **XX**, finding that this ordinance is (1) not a Project under the California Environmental Quality Act (“CEQA”) and is therefore exempt pursuant to CEQA Guidelines section 15378; and (2) 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).

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

Section 1. Amendments to Richmond Municipal Code

Chapter 15.**XX** is hereby added to the Richmond Municipal Code to read as follows:

Chapter 15.XX** PROHIBITION OF THE STORAGE AND HANDLING OF COAL AND PET COKE**

15.XX**.010 – Purpose**

The purpose of this chapter is to establish a prohibition on the storage and handling of coal or pet coke throughout the City of Richmond, with certain exceptions. The chapter also phases out existing allowed uses of land involving the storage and handling of coal and pet coke.

This chapter 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 pet coke storage and handling. This chapter is also intended to ensure that coal and pet coke storage and handling does not create a public nuisance or cause adverse public health, safety, or welfare impacts (including, without limitation, adverse impacts to property values, aesthetics, and economic interests).

15.XX.020 – Definitions

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

1. "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.
2. "Pet Coke" means a carbonaceous solid delivered from oil refinery coker units or other cracking processes.
3. "Coal or Pet Coke Bulk Material 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 pet coke is or may be stored or handled.
4. "Effective Date" means the date that Ordinance No. [REDACTED], which added Chapter 15.XX to the Richmond Municipal Code, took effect.
5. "Owner or Operator" means any person who has legal title to any coal or pet coke bulk material facility; who has charge, care, or control of any coal or pet coke bulk material facility; who is in possession of any coal or pet coke bulk material facility or any part thereof; and/or who is entitled to control or direct the management of any coal or pet coke bulk material facility.
6. "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.

15.XX.030 – Prohibition on New Uses.

The storage and handling of coal or pet coke at coal or pet coke bulk material facilities is prohibited in all zoning districts.

15.XX.040 – Exemptions.

The following non-commercial uses are exempt from the provisions of this Chapter 15.XX: residential, educational, scientific, recreational, religious, or cultural uses in which persons store or handle small amounts of coal.

15.XX.050 – Nonconforming Uses; Amortization Period.

(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.XX.030 of this Code as of the effective date.

(b) As used in this Section, “nonconforming land use” means any active coal or pet coke bulk material facility in existence prior to the effective date.

(c) Except as otherwise provided in this Section, all nonconforming land uses shall be discontinued within XX¹ years after the effective date. The XX-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 pet coke stored or handled in a calendar year beyond the average amount of coal or pet coke stored or handled annually at the coal or pet coke bulk material facility in the three years prior to the effective date. Nonconforming land uses shall not expand the footprint of coal or pet coke storage or handling activities at the coal or pet coke bulk material facility.

(e) Within ___ 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 pet coke bulk material 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 (XX) 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. 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.

(i) “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.

(ii) 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. The Planning Commission may direct that an amortization analysis be prepared, at the applicant’s expense, by an expert retained by the City.

¹ To be determined; five years is the recommended maximum.

- (iii) 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 the nonconforming land use presents a substantial risk to public health or safety or otherwise constitutes a public nuisance under Civil Code sections 3479 and 3480.
- (iv) 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.

(g) The owner or operator requesting the extension shall have the burden of demonstrating that it is entitled to an extension under this sub-section (XX). 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.

(h) 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 Chapter does not create or confer any vested rights.

15.XX.060 – Violations; Declaration of a Nuisance; Abatement.

Any land use that fails to comply with or violates any provision of this Chapter 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.XX.070 – Exceptions; Procedures.

(a) The provisions of this Chapter 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 chapter effects an unconstitutional taking of property without compensation, the property owner may request, and the Planning Commission may grant, an exception to application of any provision of the chapter if the Planning Commission finds, based on substantial evidence, that both (1) the application of any aspect of the chapter 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 15.050(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 (XX) may be appealed to the City Council in the same manner as prescribed in Section 15.04.803.140 of this Code.

15.XX.080 – Non-applicability to Transportation of Coal

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

15.XX.090 – Conflicting Provisions

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

Section 2. Severability.

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

Section 3. Effective Date.

This ordinance shall be effective 30 days after passage and adoption.

First introduced at a regular meeting of the City Council of the City of Richmond, California, held on _____, and finally passed and adopted at a regular meeting held on _____ by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Clerk of the City of Richmond

(SEAL)

Approved:

Mayor

Approved as to form:

City Attorney

DRAFT

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3. “Coal or Pet Coke Bulk Material 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 pet coke is or may be stored or handled.
4. “Effective Date” means the date that Ordinance No. **XX** - **XX**, which added Chapter 15.**XX** to the Richmond Municipal Code, took effect.
5. “Owner or Operator” means any person who has legal title to any coal or pet coke bulk material facility; who has charge, care, or control of any coal or pet coke

bulk material facility; who is in possession of any coal or pet coke bulk material facility or any part thereof; and/or who is entitled to control or direct the management of any coal or pet coke bulk material facility.

6. “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.

15.XX.030 – Prohibition on New Uses.

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15.XX.040 – Exemptions.

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15.XX.050 – Nonconforming Uses; Amortization Period.

(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.XX.030 of this Code as of the effective date.

(b) As used in this Section, “nonconforming land use” means any active coal or pet coke bulk material facility in existence prior to the effective date.

(c) Except as otherwise provided in this Section, all nonconforming land uses shall be discontinued within XX¹ years after the effective date. The XX-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 pet coke stored or handled in a calendar year beyond the average amount of coal or pet coke stored or handled annually at the coal or pet coke bulk material facility in the three years prior to the effective date. Nonconforming land uses shall not expand the footprint of coal or pet coke storage or handling activities at the coal or pet coke bulk material facility.

(e) Within ___ 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 pet coke bulk material 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 (XX) 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. 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.

(i) “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.

(ii) 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. The Planning Commission may direct that an amortization

¹ To be determined; five years is the recommended maximum.

analysis be prepared, at the applicant's expense, by an expert retained by the City.

- (iii) 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 the nonconforming land use presents a substantial risk to public health or safety or otherwise constitutes a public nuisance under Civil Code sections 3479 and 3480.
- (iv) 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.

(g) The owner or operator requesting the extension shall have the burden of demonstrating that it is entitled to an extension under this sub-section (XX). 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.

(h) 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 Chapter does not create or confer any vested rights.

15.XX.060 – Violations; Declaration of a Nuisance; Abatement.

Any land use that fails to comply with or violates any provision of this Chapter 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.XX.070 – Exceptions; Procedures.

(a) The provisions of this Chapter 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 chapter effects an unconstitutional taking of property without compensation, the property owner may request, and the Planning Commission may grant, an exception to application of any provision of the chapter if the Planning Commission finds, based on substantial evidence, that both (1) the application of any aspect of the chapter 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 15.050(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 (XX) may be appealed to the City Council in the same manner as prescribed in Section 15.04.803.140 of this Code.

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First introduced at a regular meeting of the City Council of the City of Richmond, California, held on _____, and finally passed and adopted at a regular meeting held on _____ by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Clerk of the City of Richmond

(SEAL)

Approved:

Mayor

Approved as to form:

City Attorney

DRAFT