

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, and 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. - , 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 lawful 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 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.

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.