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, SCAQMD 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 PM2.5 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 PM2.5 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

2 EPA, Health Effects of Petroleum Coke.
3 Tim Driscoll et al., World Health Organization, Occupational airborne particulates (2004);
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 to 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.

ABSTENSIONS: 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
City of Richmond

: ss.

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