

**ORDINANCE NO. 02-22 N.S.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND  
AMENDING ARTICLE 15.04.615 OF THE RICHMOND MUNICIPAL CODE TO  
EXTEND THE AMORTIZATION PERIOD FOR NONCONFORMING LAND USES  
RELATED TO THE STORAGE AND HANDLING OF COAL AND PETROLEUM  
COKE TO DECEMBER 31, 2026**

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**WHEREAS**, on February 4, 2020, the City Council adopted Ordinance No. 05-20 N.S. (“Existing Ordinance”), adding Article 15.04.615 to the Richmond Municipal Code (“RMC”), prohibiting the storage and handling of coal and petroleum coke within the City effective March 5, 2020, and providing a 3-year “amortization period” for continued storage and handling of coal and petcoke at existing facilities; and

**WHEREAS**, at the time of adoption of the Existing Ordinance and at present, the Levin-Richmond Terminal is the only known existing facility in the City of Richmond that stores and handles coal and petcoke; and

**WHEREAS**, in March 2020, Levin and two companies shipping coal and petroleum coke through the Levin Terminal (together, the “Companies”) filed a total of five lawsuits in state and federal courts challenging the Existing Ordinance; and

**WHEREAS**, the City successfully defended the two cases before the state trial court, and one of those two cases is currently before the Court of Appeal; and

**WHEREAS**, the three federal court cases remain pending; and

**WHEREAS**, in early 2021, the City and the Companies participated in a mediation before a retired federal judge, and thereafter engaged in settlement discussions, which culminated in a settlement agreement to potentially resolve the litigation; and

**WHEREAS**, the settlement agreement was fully executed and became effective on November 12, 2021; and

**WHEREAS**, the settlement agreement provides that City staff shall present an amendment to RMC Article 15.04.615, specifically amending RMC Sections 15.04.615.050.C and 15.04.615.010.B, to the Planning Commission and City Council for their consideration; and

**WHEREAS**, the proposed amendment, if adopted, would extend the amortization period from March 5, 2023, to December 31, 2026; and

**WHEREAS**, if the City Council adopts the proposed amendment, the Companies would take various actions, including dismissing the litigation, waiving Levin’s ability to seek an extension to the amortization period, and implementing a series of additional dust control measures to reduce pollution from their operations during the amortization period; and

**WHEREAS**, notwithstanding the settlement agreement, the City Council retains full discretion to adopt, reject, or modify the proposed amendment; 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 December 2, 2021, the Planning Commission held a duly and properly noticed public hearing to consider a recommendation to the City Council on the proposed amendments to RMC Sections 15.04.615.050.C and 15.04.615.010.B; and

**WHEREAS**, the Planning Commission considered the agenda report, all public comments, the proposed amendments to RMC Sections 15.04.615.050.C and 15.04.615.010.B as set forth in Exhibit A of this Ordinance and incorporated by reference herein, and the applicable provisions of the RMC (“the Record”) and voted to recommend adoption of an ordinance making the proposed amendments; and

**WHEREAS**, on January 11, 2022, the City Council held a duly and properly noticed public hearing to consider the proposed amendments to RMC Sections 15.04.615.050.C and 15.04.615.010.B as set forth in Exhibit A of this Ordinance and incorporated by reference herein; and

**WHEREAS**, the City Council considered the agenda report, all public comments, the proposed amendments, and the applicable provisions of the RMC (“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, the amendments to RMC Sections 15.04.615.050.C and 15.04.615.010.B extending the amortization period for nonconforming uses related to coal and petroleum coke storage and handling to December 31, 2026, are not a “project” because their 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 to RMC Sections 15.04.615.050.C and 15.04.615.010.B qualified as a “project” subject to CEQA, they are exempt from CEQA pursuant to CEQA Guidelines § 15301, as an operation of, permit for, or minor alteration of existing facilities involving negligible or no expansion of existing or former use; CEQA Guidelines §§ 15307 and 15308, as an action to protect natural resources and the environment, respectively; and CEQA Guidelines § 15061(b)(3), because there is no possibility that this activity will have a significant impact on 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) Amended Sections 15.04.615.050.C and 15.04.615.010.B are consistent with the General Plan, Richmond Municipal Code, and applicable State law; and

5) Amended Sections 15.04.615.050.C and 15.04.615.010.B 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 amending Sections 15.04.615.050.C and 15.04.615.010.B of the Richmond Municipal Code extending the amortization period for nonconforming uses related to the storage and handling of coal and petroleum coke to December 31, 2026, 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 amendment is consistent with and supports the goals outlined in the Health and Wellness Element of the City’s General Plan. For example, the amendment 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 amendment supports this goal because the additional dust control measures it would trigger would reduce 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 and rail lines. Further, the amendment supports this goal by eliminating the risk that the phase-out of coal and petroleum coke storage and handling would be invalidated in litigation and thus never take effect.

**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. The proposed amendment and the provisions of the settlement agreement that it would trigger would (1) reduce particulate matter emissions by requiring the implementation of additional dust control measures, and (2) eliminate the risk that the phase-out of coal and petroleum coke storage and handling would be invalidated in litigation and thus never take effect. Further, the proposed amendment would provide the Levin Terminal with additional time to transition to other, less polluting commodities. By facilitating this transition, the proposed amendment would lead to the retention of jobs at the Levin Terminal and corresponding economic benefits.

**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 15301 (operation, permitting, or minor alteration of existing private facilities involving negligible or no expansion of existing or former use), 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 proposed amendments are only changes to the Zoning Ordinance text.

**SECTION II. The City Council of the City of Richmond does ordain as follows:**  
Amends sections 15.04.615.050.C and 15.04.615.010.B of the Richmond Municipal Code to extend the amortization period for nonconforming uses related to the storage and handling of coal and petroleum coke to December 31, 2026. The amendments are attached to this Ordinance as Exhibit A and incorporated by reference herein.

**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 18, 2022, and finally passed and adopted at a regular meeting held February 1, 2022, by the following vote:

AYES: Councilmembers Bates, Jimenez, Martinez, McLaughlin, Willis, Vice Mayor Johnson III, and Mayor Butt.  
NOES: None.  
ABSTENTIONS: None.  
ABSENT: None.

PAMELA CHRISTIAN  
CLERK OF THE CITY OF RICHMOND  
(SEAL)

Approved:

THOMAS K. BUTT  
Mayor

Approved as to form:

DAVE ALESHIRE  
Interim 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. 02-22 N.S.**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on February 1, 2022.

  
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Pamela Christian, Clerk of the City of Richmond

Attachment: Exhibit A: Draft Zoning Text Amendments

## 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 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, 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 by December 31, 2026. The period from the March 5, 2020 effective date of Ordinance No. 05-20 N.S. through December 31, 2026, 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.