



Memorandum

DATE: October 21, 2021

TO: Mayor and City Council

FROM: Chad Eiken, Director, Community Development Department
Aaron Lande, Program and Policy Development Manager
Bryan Snodgrass, Principal Planner, Community Development Department

RE: November 1, 2021 workshop review of fossil fuel moratorium and potential regulations

CC: Eric Holmes, City Manager

This memorandum is provided to update the Council on the status of potential zoning code standards being drafted to replace an existing temporary moratorium on large scale fossil fuel facilities. The moratorium was originally enacted by the Council in June 2020 and extended most recently in May 2021, and is scheduled to expire on December 8. By law only six-month extensions are allowed.

Staff presented a set of potential code updates at the August 2, 2021 City Council workshop and received good feedback, which was used in the drafting of a SEPA Determination of Non-Significance (DNS) for the proposed code amendments, in order to solicit public comment. The City received an appeal of its SEPA Determination from the Western States Petroleum Association, which identified a number of concerns with the City's analysis. Staff agrees that more analysis is likely needed and has withdrawn the SEPA DNS to allow for additional work, which may necessitate assistance from outside experts. Staff will therefore be recommending in the coming weeks that Council consider extending the temporary moratorium a further six months as provided by state law.

Moratorium Background

The moratorium, which was enacted by Council in June of 2020, prohibits new or expanded large-scale fossil fuel facilities, based on concerns about potential impacts to local public and environmental health and safety and to climate change. It has been enacted to allow time to update the land use code standards for such uses and to align them with other planning efforts currently underway, such as the Vancouver Strategic Plan update, Climate Action Plan, and other Title 20 code amendments

The moratorium prohibits new or expanded facilities engaged in distribution, extraction, refinement, processing or bulk movement of fossil fuels, or bulk storage of over two million gallons of fossil fuels. Railyards, airports, and marine-service facilities are exempted, along with facilities producing energy from landfill gas, fossil fuel by-products such as asphalt or others, or direct consumer sales such as gas

stations. Upkeep, repair, maintenance, or City-mandated health and safety improvements of any existing facilities are also exempted.

The fossil fuel facility moratorium follows a narrower crude oil facility moratorium and zoning code standards adopted in 2014. That moratorium and zoning prohibition was spurred by a proposed large scale crude oil transshipment terminal proposed at the Port of Vancouver in 2013. That facility was ultimately denied by the Governor in 2018 following a unanimous denial recommendation from the state Energy Facility Site Evaluation Council which is tasked with review of the very largest energy facilities.

Potential Zoning Code Changes

Five existing facilities were initially identified as being subject to the fossil fuel moratorium and anticipated permanent zoning code standards. The facilities generally process, store, or transport propane, natural gas, and petroleum products, and all appear to be located on or near the Port of Vancouver on lands with moderate to high liquefaction susceptibility in the event of an earthquake. As noted in the August 2 Council workshop staff report, the probability of a 9.0 Cascadia subduction earthquake occurring over the next 50 year has been estimated at approximately 10%.

As also noted in the August 2 discussion, initial outreach on code changes began with invitations to all parties commenting on the original 2020 moratorium, resulting in meetings with nine different groups:

- Port of Vancouver and NuStar (tenant)
- Physicians for Social Responsibility
- SW Washington Beyond Fossil Fuel task force
- Columbia Riverkeeper
- NW Natural
- Washington Environmental Council
- Friends of the Gorge
- Western States Petroleum Association
- Tidewater

Environmental groups generally supported the moratorium and associated code changes based on environmental impacts, public health and safety, and environmental justice issues. Industry-affiliated groups raised concerns about economics impacts, and specifically about the ability to undergo facility maintenance including seismic retrofits, and to transition to renewable fuels at existing facilities.

Staff developed initial proposed fossil fuel facility zoning standards based closely on the definitions and thresholds of the moratorium, and issued a State Environmental Policy Act (SEPA) Determination of Non-Significance and checklist. These generated formal comments and then a SEPA appeal on September 14, 2021 from the Western States Petroleum Association (WSPA). The appeal argued that the analysis was insufficient, particularly regarding impacts created by preventing new facilities and upgrades or relocations of existing facilities that would increase efficiency, public safety, and environmental protection. The appeal also asserted that the proposal would have probable significant adverse impacts, and a full Environmental Impact Statement (EIS) is needed.

A SEPA comment letter was also submitted by the Port of Vancouver, which indicated overall support for City climate goals but also indicated specific concerns that new or existing users which store or process fossil fuels as an ancillary part of their activities may be inadvertently subject to zoning prohibitions or limitations.

While staff does not believe that the proposed code changes warrant a full Environmental Impact Statement, the appeal does raise valid questions about some of the SEPA checklist analysis and about the thresholds and definitions in the potential code language itself. Accordingly, staff has withdrawn the original SEPA determination, and will be addressing the following issues in revising specific zoning provisions:

- Determining whether the treatment of existing facilities in the moratorium is appropriate and defensible for potential code standards. The moratorium exempts upkeep, repair, maintenance, or City-mandated health and safety improvements. Staff is exploring whether allowances for transitions to cleaner fuels, other public environmental safety improvements, or other considerations are warranted.
- Confirming whether the current City inventory of known existing fossil fuel facilities is fully complete, and whether there are other facilities with only ancillary use of fossil fuels that would be inadvertently subject to the potential standards.
- Examining whether any specific consideration should be given to relocated or consolidated facilities.
- Determining the environmental and economic analysis needed to defensibly support the proposed zoning changes.
- Deeper research and consultation with the few Washington jurisdictions that are exploring fossil fuel facility prohibitions or limitations in similar ways. For example, after a lengthy process Whatcom County recently adopted standards prohibiting new fossil fuel facilities and requiring expansions to demonstrate consistency with a range of climate and other standards through a conditional use process. The City of Tacoma is also considering related standards.

Next Steps

Planning, policy, and legal staff will be available to answer questions at the November 1 workshop. Subject to Council feedback, staff anticipates bringing forward an ordinance for first reading on November 22 and hearing on December 6, to extend the moratorium an additional six months to June 8, 2022.