

11/22/2021
12/06/2021

ORDINANCE NO. _____

AN ORDINANCE further extending for an additional period of six months the moratorium originally enacted by Ordinance No. M-4295, which was first extended by Ordinance No. M-4323, and subsequently extended a second time by Ordinance No. M-4335, prohibiting the establishment of new, or expansion of existing, large-scale fossil fuel facilities; directing staff to work to consider the issues noted by the various stakeholders and to ensure that the proposed amendments to the City Code adequately address the legal concerns raised by current industry operators; and establishing an effective date.

WHEREAS, the City of Vancouver is a Charter City of the First Class and has the authority to adopt and renew temporary moratoria pursuant to the City's constitutional police powers, home rule authority, RCW 36.70A.390, and RCW 35.63.200; and

WHEREAS, on June 8, 2020, the Vancouver City Council adopted Ordinance No. M-4295, enacting a six-month temporary moratorium prohibiting the establishment of new, or expansion of existing, large-scale fossil fuel facilities; and

WHEREAS, the City Council held a public hearing on July 20, 2020, and thereafter adopted findings of fact supporting the enactment of the moratorium; and

WHEREAS, on December 7, 2020, the City Council held another public hearing, at the conclusion of which it made additional findings of fact and adopted Ordinance No. M-4323, extending the moratorium for another six months, until June 8, 2021; and

WHEREAS, on May 17, 2021, the City Council held an additional public hearing, at the conclusion of which it made further findings of fact and adopted Ordinance No. M-4335, extending the moratorium again for another six-month period, until December 8, 2021; and

WHEREAS, the City of Vancouver and the greater Pacific Northwest are vulnerable to powerful subduction zone earthquakes that occur with periodic frequency along the Juan de Fuca and North American plates; and

WHEREAS, geologic research has shown that subduction zone earthquakes have occurred along the Pacific Northwest with relative regularity over the last 10,000 years, and if averages from past events are predictive, the region could be overdue for another powerful subduction zone earthquake; and

WHEREAS, facilities that store or process hazardous materials have been recognized to present an increased risk of spills or leaks, and a greater concentration of such facilities renders the City's water supply at an increased susceptibility to contamination, particularly in the event of a powerful earthquake; and

WHEREAS, the City Council recognizes that the storage, transfer, processing, and handling of other fossil fuels within the City pose risks to safety, health, and livability, including mobility of people, other freight, and other commercial vehicles which are potentially catastrophic in magnitude; and

WHEREAS, this City Council finds that it is appropriate to conduct review and analysis of the City's current vulnerabilities to determine if the purposes of Title 20 and Chapter 14.26 VMC may continue to be fulfilled while accommodating the establishment of new, or expansion of existing, large-scale fossil fuel facilities; and

WHEREAS, the City Council finds that in order to preserve the City's ability to develop legislative amendments to address these issues with the widest range of choices and alternatives for future development, it is necessary to temporarily restrict the establishment of new, or

expansion of existing, large-scale fossil fuel facilities until the strategy and corresponding code updates are completed; and

WHEREAS, City staff presented proposed code amendments to the City Council during the workshop held on August 2, 2021, after which City staff then issued a SEPA Determination of Non-Significance (DNS) for the proposed code amendments, which commenced a required public comment period; and

WHEREAS, 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; and upon consideration of the appeal and related comments, staff agrees that more analysis is needed, and has withdrawn the SEPA DNS to allow for additional work, which may necessitate assistance from outside experts; and

WHEREAS, extending the moratorium for another six months will allow City staff enough time to engage with consultants and other experts in the field to thoroughly analyze these issues and develop more appropriate strategies to mitigate risks associated with the establishment of new, or expansion of existing, large-scale fossil fuel facilities in the future, through amendments to existing zoning ordinances; and

WHEREAS, the extension of the existing moratorium prohibiting the establishment of new, or expansion of existing, large-scale fossil fuel facilities, for an additional six months, promotes the public health, safety, and general welfare of the people of Vancouver, and will encourage the most desirable and productive use of land and community resources; and

WHEREAS, it is necessary that this ordinance go into effect immediately in order to keep the existing moratorium in place, maintain continuity of the status quo, and avoid a rush of applications for new or expanded development of large-scale fossil fuel facilities.

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

Section 1. *Findings of fact.* The recitals to this ordinance, along with the recitals to Ordinance Nos. M-4295, M-4323, and M-4335, are hereby incorporated by this reference and adopted as the City Council’s findings of fact justifying renewal of the existing moratorium prohibiting the establishment of new, or expansion of existing, large-scale fossil fuel facilities, for an additional period of six months, in accordance with RCW 36.70A.390 and RCW 35.63.200. The City Council held the requisite public hearing on December 6, 2021, prior to final adoption of this ordinance and further renewal of the existing moratorium.

Section 2. *Definitions.* For the purposes of this ordinance:

A. “Fossil fuels” means petroleum and petroleum products, coal, and natural gasses, including without limitation methane, propane and butane, derived from prehistoric organic matter and used to generate energy. Fossil fuels do not include by-products such as asphalt, plastics, fertilizers, paints, or denatured ethanol.

B.1. “Large-scale fossil fuel facilities” means:

a. Facilities engaged in the wholesale distribution, extraction, refinement or processing of fossil fuels;

b. Terminals engaged in the bulk movement of fossil fuels (excluding railyards, fuel storage for airports, and fuel storage for marine servicing facilities);

c. Bulk coal storage: any structure, group of structures, equipment, or device that stores or transfers coal for use in the production of electricity or power.

d. Coal power plant: a thermal power station which burns coal to generate electricity or other usable power.

e. Natural gas processing: any facility which (i) separates natural gas components to recover usable natural gas liquids (*i.e.*, liquefied petroleum or natural gas), or (ii) produces natural gas suitable for transport (*i.e.*, pipeline quality dry natural gas), or (iii) processes natural gas to create methanol or other chemical products.

f. Natural gas storage and handling: any structure, group of structures, equipment, or devices that stores or transfers natural gas for use in the production of electricity or power, or for further processing (excluding facilities that create energy from landfill gas).

g. Bulk storage of one type of fossil fuel, or a combination of multiple types of fossil fuels, in excess of two million gallons.

2. “Large-scale fossil fuel facilities” do not include facilities that solely provide direct sales or distribution to consumers (*e.g.*, gas stations are not large-scale fossil fuel facilities).

Section 3. *Six-month renewal of moratorium.* As authorized by the City’s constitutional police powers, home rule authority, RCW 36.70A.390 and RCW 35.63.200, the City Council hereby renews the temporary moratorium on the acceptance, processing, and granting of applications for permits for establishment of new, or expansion of existing, large-scale fossil fuel facilities, for an additional period of six months.

Section 4. *Exemptions.* The moratorium, which was enacted by Ordinance No. M-4295, first extended by Ordinance No. M-4323, and subsequently extended a second time by Ordinance No. M-4335, and which is hereby renewed for an additional six months pursuant to Section 3 of this ordinance, shall not apply to permits required for upkeep, repair, or maintenance of existing buildings or properties, or work mandated by the City to maintain public health and safety.

Section 5. Duration. The moratorium enacted by Ordinance No. M-4295, first extended by Ordinance No. M-4323, and subsequently extended a second time by Ordinance No. M-4335, shall not expire on December 8, 2021, as stated in Ordinance No. M-4335, but instead shall remain in effect for an additional six months therefrom, until June 8, 2022, unless earlier terminated by the City Council.

Section 6. Vested rights. The moratorium renewed and extended by this ordinance does not apply to properties with vested rights existing on the date of the initial adoption of this moratorium. “Vested Rights” shall be defined in accordance with VMC 20.210.110.

Section 7. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, or should any portion of this ordinance be preempted by state or federal law or regulation, the remainder of the ordinance or the application of the provision to other persons or circumstances shall survive and be unaffected.

Section 8. Effective date. The City Council hereby finds and declares that an emergency exists which necessitates that this ordinance become effective immediately in order to preserve the public health, safety and welfare. This ordinance shall become effective immediately upon passage at second reading, following public hearing. The City Clerk is directed to publish a summary hereof including the title at the earliest possible publication date.

Read the first time:

Ayes: Councilmembers

Nays: Councilmembers

Absent: Councilmembers

Read the second time:

Passed by the following vote:

Ayes: Councilmembers

Nays: Councilmembers

Absent: Councilmembers

SIGNED this _____ day of _____, 2021.

Anne McEnery-Ogle, Mayor

Attest:

Natasha Ramras, City Clerk

Approved as to form:

Jonathan Young, City Attorney

SUMMARY

ORDINANCE NO. _____

AN ORDINANCE further extending for an additional period of six months the moratorium originally enacted by Ordinance No. M-4295, which was first extended by Ordinance No. M-4323, and subsequently extended a second time by Ordinance No. M-4335, prohibiting the establishment of new, or expansion of existing, large-scale fossil fuel facilities; directing staff to work to consider the issues noted by the various stakeholders and to ensure that the proposed amendments to the City Code adequately address the legal concerns raised by current industry operators; and establishing an effective date.

The full text of this ordinance will be mailed upon request. Contact Raelyn McJilton, Records Officer at (360) 487-8711, or via www.cityofvancouver.us (Go to City Government and Public Records).