



CITY COUNCIL

TO: City Council
FROM: Chad Eiken, Director, Community Development; Bryan Snodgrass, Principal Planner, Community Development
SUBJECT: **City Council Staff Report: Fossil Fuel Ordinance**

Report Date: 9/26/2022
Hearing Date: 10/3/2022
Proposal: Updates to VMC Title 20, Land Use and Development Code, regarding the regulation of fossil fuel uses
Location: Heavy Industrial and Light Industrial Districts
Proponent/Applicant: Community Development Department
City Staff: Chad Eiken, CDD Director; Bryan Snodgrass, Principal Planner
Recommendation: Adoption of ordinance amending VMC 20.150, VMC 20.160, VMC 20.410, VMC 20.420, VMC 20.430, VMC 20.440, VMC 20.450, and VMC 20.895 in regard to the regulation of fossil fuel storage and handling uses and development standards

I. PRIOR CITY COUNCIL REVIEW:

The City Council has held five public hearings on the moratorium on new or expanded bulk fossil fuel facilities since June of 2020, four of which were related to proposed extensions of the initial moratorium. Two public workshops have been held on the proposed code changes, on August 1, 2022 and September 12, 2022.

II. BACKGROUND AND REVIEW PROCESS:

Moratorium

In June 2020, City Council enacted a six-month moratorium on 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. Facilities producing energy from landfill gas, fossil fuel by-products such as asphalt or others, or direct consumer sales such as gas stations, are all explicitly exempted from the moratorium. Upkeep, repair, maintenance, or City-mandated health and safety improvements of any existing facilities are also exempted.

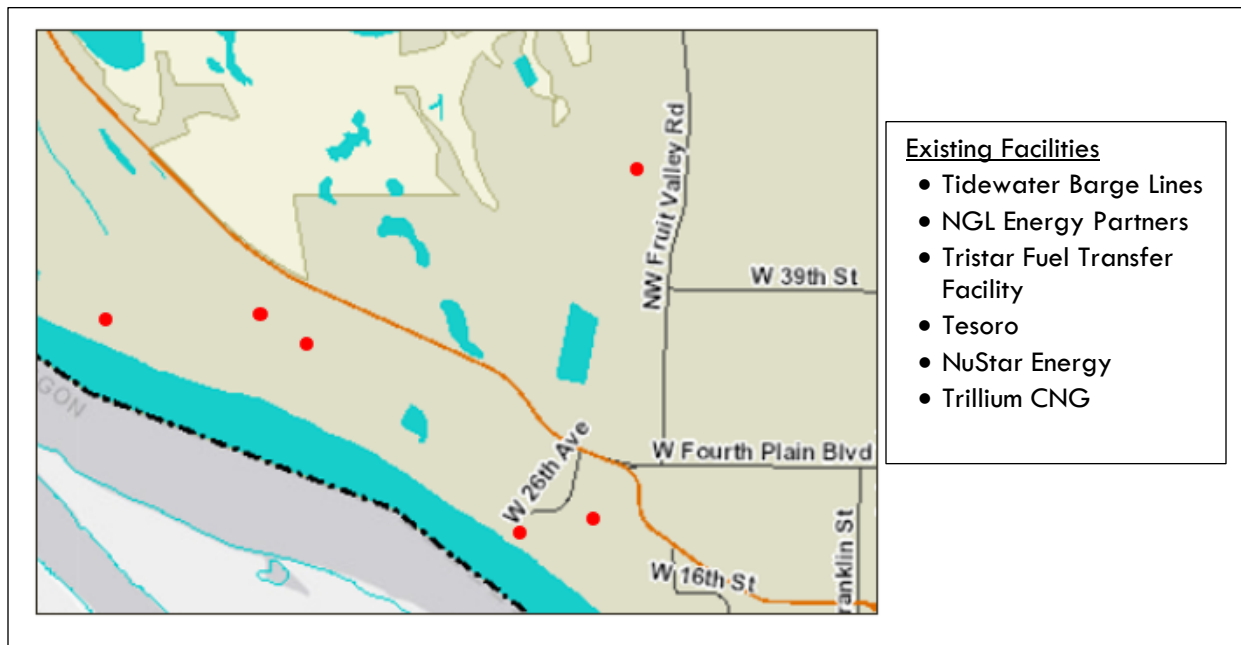
The current fossil fuel facility moratorium follows a narrower crude oil facility moratorium and subsequent update to zoning code standards adopted in 2014. That moratorium and zoning prohibition was spurred by a proposed large scale crude oil transshipment terminal proposed at the Port of Vancouver 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 (EFSEC), which is tasked with review of the very largest energy facilities proposed in the state.

The current moratorium, which was extended by City Council on June 8, 2022 will expire on November 6, unless extended by City Council.

Existing Bulk Fossil Fuel Facilities

Six existing facilities fit the proposed definition of bulk fossil fuel storage and handling, shown on the map below. All of the facilities are on located on the west side of Vancouver, with one on private property west of the Port of Vancouver, four facilities in the Port of Vancouver, and one facility on private property west of Fruit Valley Road, north of W. 39th Street. All are on lands with moderate to high liquefaction susceptibility in the event of an earthquake. One facility (Trillium CNG) is located within the IL, Light Industrial District and the other five facilities are located within the IH, Heavy Industrial District.

Map 1: Location of Existing Bulk Fossil Fuel Facilities in Vancouver



Code Development

The stated objective of the moratorium is to allow time for staff to propose changes to VMC Title 20, Land Use and Development Code, to regulate bulk fossil uses and for such changes to be adopted by City Council. At various public meetings on the moratorium proposed code changes, Council's direction to staff was to: a) prohibit new large-scale fossil fuel facilities in all zoning districts; provide definitions for regulated fossil fuels and large-scale facilities consistent with moratorium; consider whether expansion of existing large-scale fossil fuel facilities should be

allowed and, if so, what standards should apply; and finally, to make the regulations as simple as possible.

Over the past two years, staff has consulted with fossil fuel industry experts, and engaged in a series of meetings with environmental advocates and fuel industry stakeholders including the Port of Vancouver and numerous representatives from several existing bulk fuel facilities, as well as the Planning Commission and City Council. Planning staff have tried where possible to incorporate input on specific code language to make the ordinance clearer and to balance the stated objectives of the Council with industry and environmental perspectives.

The proposed code changes will accomplish several key objectives which are in alignment with the intent of the moratorium and prior Council direction:

- New bulk fossil fuel facilities would be prohibited in all zoning districts;
- Existing bulk fossil fuel facilities could be upgraded and maintained to ensure safe operations;
- Cleaner fuels would be specifically defined to include a number of types of liquid or gaseous fuels produced from renewable sources or that that have low or no emissions;
- Capacity of existing bulk fossil fuel facilities could be expanded by 15% if switched to cleaner fuels, upgraded to seismic standards, and subject to approval of fire and spill response plans, among other requirements;
- Small fossil fuel storage and handling facilities of less than 60,000 gallons would be allowed in the IH, Heavy Industrial District, as a conditional use, and small cleaner fuel storage and handling facilities would be allowed in the IH District as a limited use;
- New cleaner fuel facilities of up to one million gallons capacity may be allowed by conditional use permit in the IH District in order to support the City's Climate Action Strategy and a transition away from fossil fuels;
- The proposed code changes have been drafted to be as simple and easy to follow as possible.

III. SUMMARY OF PROPOSAL:

(Note: Full text can be found in Exhibit A)

- A. Amend VMC 20.150 Definitions to delete the definition for Bulk Crude Storage, which will be replaced by a new definition, Bulk Fossil Fuel;
- B. Amend VMC 20.150 Definitions to add a new definition for Cleaner Fuels to include liquid or gaseous fuels produced from renewable sources or that have low or no emissions;
- C. Amend VMC 20.150 Definitions to include a new definition of petroleum;
- D. Amend VMC 20.160 Use Classifications to delete "fuel oil distributions and solid fuel yards from the Industrial Services use classification;
- E. Amend VMC 20.160 Use Classifications to delete "biomass and coal energy generation facilities" from the definition of Major Utility Facilities;
- F. Amend VMC 20.160 Use Classifications to add a new definition for Bulk Fossil Fuel Storage and Handling Facility;
- G. Amend VMC 20.160 Use Classifications to add a new definition for Cleaner Fuels Storage and Handling Facility;

- H. Amend VMC 20.160 Use Classifications to add a new definition for Small Fossil Fuel or Cleaner Fuel Storage and Distribution Facilities;
- I. Amend Residential and Commercial/Mixed Use Tables at VMC 20.410.030-1, 20.420.030-1, 20.430 to add Bulk Fossil Fuel Storage and Handling Facilities, Cleaner Fuel Storage and Handling Facilities, and Small Fossil Fuel and Cleaner Fuels Storage and Distribution Facilities and indicate that such uses are prohibited in all zoning districts;
- J. Amend VMC 20.440.030-1 Industrial District Use Table to add Bulk Fossil Fuel Storage and Handling Facilities, as prohibited in the OCI, Office Commercial Industrial, and ECX, Employment Center Mixed Use Districts and allowed as a permitted use (existing only), limited use (conversions) and conditional use (minor expansion) in the IL, Light Industrial District and IH, Heavy Industrial District with a footnote directing to additional development standards in a new section VMC 20.895.110;
- K. Amend VMC 20.440.030-1 Industrial District Use Table to add Cleaner Fuel Storage and Handling Facilities, as prohibited in the OCI, IL and ECX Districts and allowed as a conditional use in the IH District with a footnote directing to additional development standards in a new section VMC 20.895.110;
- L. Amend VMC 20.440.030-1 Industrial District Use Table to show Small Fossil Fuel and Cleaner Fuels Storage and Distribution Facilities as prohibited uses in the OCI, IL, and ECX Districts;
- M. Amend VMC 20.440.030-1 Industrial District Use Table to show Small Fossil Fuel Facilities as allowed by conditional use permit in the IH District and Small Cleaner Fuel Storage and Distribution Facilities as a limited use in the IH District, with a footnote directing to additional development standards in a new section VMC 20.895.110;
- N. Amend VMC 20.440.030-1 Industrial District Use Table, footnote 33, to state that coal-fired electricity generating plants are prohibited in all districts;
- O. Amend VMC 20.440.030-1 Industrial District Use Table by adding a new footnote 34 that states new bulk fossil fuel facilities are prohibited, maintenance and safety improvements to existing facilities are allowed subject to requirements in VMC 20.895.110, and the requirements for conversion of existing bulk facilities to cleaner fuels, including the allowance to expand by up to 15% of baseline capacity subject to a conditional use permit and compliance with standards in VMC 20.895.110;
- P. Amend VMC 20.440.030-1 Industrial District Use Table by adding a new footnote 37 that references the development standards in VMC 20.895.110;
- Q. Amend Open Space Districts Use Table at VMC 20.450.030-1 to add Bulk Fossil Fuel Storage and Handling Facilities, Cleaner Fuel Storage and Handling Facilities, and Small Fossil Fuel and Cleaner Fuels Storage and Distribution Facilities and indicate that such uses are prohibited in all zoning districts;
- R. Amend VMC 20.895 Miscellaneous Special Use Standards to add a new section .110 "Fossil Fuel or Cleaner Fuel Storage and Handling" with a purpose statement, applicability to the three types of fuel storage and handling uses, standards for non-capacity improvements, standards for new or expanded small fossil fuel or cleaner fuel storage and distribution facilities, standards for bulk fossil fuel storage and handling facility expansions, statement that says new bulk facilities are prohibited regardless of size, standards for cleaner fuels storage and handling facilities (new or expansion) to include maximum 15% increase in capacity if converted to cleaner fuels, facility must be upgraded to seismic standards, submission of a greenhouse gas emissions impact study, submission of financial assurance in case of accidents, submission of an annual

report regarding storage capacity and shipment information, and no new facility may be located closer than 1,000 feet to any residential zoning district.

IV. REVIEW CRITERIA AND FINDINGS:

A. VMC 20.285.090 Zoning Code Text Amendments

Approval criteria for Zoning Code text amendments

Proposed zoning or development regulation text changes shall be considered based on the following:

- 1. The proposed change is consistent with the comprehensive plan; and*
- 2. The proposed change is necessary to further the public interest based on present needs and conditions.*

B. Applicable Vancouver Comprehensive Plan Policies

EN-1 Environmental protection

Protect, sustain, and provide for healthy and diverse ecosystems

EN-2 Stewardship

Demonstrate and promote environmental stewardship and education

EN-3 Energy Conservation

Promote and facilitate energy conservation and alternative energy sources and generation

EN-5 Environmental coordination

Coordinate environmental policies and programs. Continue to consolidate environmental regulations

EN-8 Water quality and quantity

Enhance and protect surface water, stormwater, and groundwater quality from septic discharge, impervious surface runoff, improper waste disposal, and other potential contaminant sources.

EN-10 Air quality

Protect and enhance air quality, in coordination with local and regional agencies and organizations

EN-11 Hazard areas

Manage development in geologically hazardous areas and floodplains to protect public health and safety

C. SEPA Determination

Pursuant to the State Environmental Policy Act (SEPA) and WAC 197-11, the City of Vancouver as lead agency has determined that the proposed Fossil Fuel Code Amendments will not have a probable significant adverse impact on the environment. A Determination of Nonsignificance (DNS) was published on August 15, 2022 in the Columbian with a 14-day comment period, which expired on August 30, 2022. Copies were emailed to state and local agencies, media representatives, concerned citizens whose names were on the master SEPA list, stakeholders and neighborhood associations. Three comment letters were received by the close of the comment period, as follows:

- Western States Petroleum Association (WSPA), dated August 30, 2022
- Alliance for Community Engagement, dated August 30, 2022
- Port of Vancouver, dated August 30, 2022

Copies of the three comment letters are attached to this staff report as Exhibits E-G. The City's consultant prepared a response to the comments received (Exhibit H).

The deadline for filing a procedural appeal of the SEPA determination was 5:00 pm on September 13, 2022. No procedural appeal was filed by the deadline. Substantive SEPA appeals shall be filed in writing within 14 calendar days of the issuance of Council's decision.

D. **Staff Analysis and Findings**

Compliance with Applicable Review Criteria

The approval criteria in VMC 20.285.090 include: a) *the proposed change is consistent with applicable Comprehensive Plan policies*, and b) *that the proposed text amendment is necessary to further the public interest based on present needs and conditions*. As described above the applicable policies in the Comprehensive Plan are all in regard to environmental protection, conservation, and stewardship. The proposed code changes are consistent with these policies in that no new bulk fossil fuel facilities will be allowed, and minor expansions of existing facilities will only be allowed if the facility is brought up to seismic standards and will be used for cleaner fuels only. There is the potential for environmental impacts from allowing new or expanded cleaner fuel facilities due to risk of fire and explosion, spills, and emissions, however as outlined in the SEPA Determination, such impacts will be addressed on a case-by-case basis as an application is reviewed, and impacts from the code change were found to be nonsignificant. The proposed text amendment will address a stated objective of the moratorium on large fossil fuel projects which is to ban all new bulk fossil fuel storage and handling facilities and implement development standards for other types of fuel facilities, and this is seen as an urgent issue based on current needs and conditions. In summary, the proposed code changes meet the approval criteria of VMC 20.285.090.

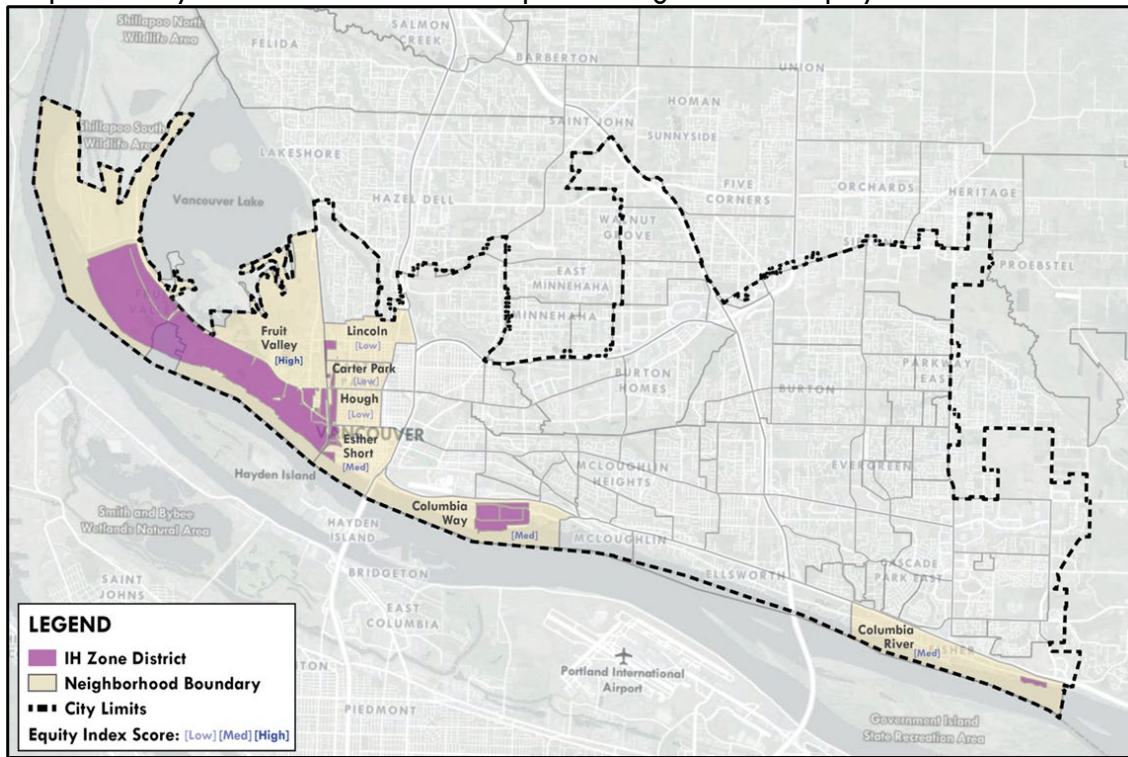
Equity Analysis

The draft code would allow expansions of existing bulk fossil fuel facilities in a limited way, small fossil fuel facilities of up to 60,000 gallons per site, and potentially new cleaner fuel facilities of up to 1 million gallons per site, in the IH, Heavy Industrial District. Most of the City's Heavy Industrial District is within the Fruit Valley Neighborhood, which includes the Port of Vancouver and industrial properties along Fruit Valley Road. Smaller areas of Heavy Industrial zoning exist further to the east in the Columbia Business Center south of Columbia Way, and a small property near the Columbia River due south of SE 192nd Avenue.

Five existing bulk fossil fuel facilities are located in the IH, Heavy Industrial District and one existing bulk fossil fuel facility located in the IL, Light Industrial District. All six facilities are located in the Fruit Valley Neighborhood, which is a neighborhood that has a high Equity Index Score due to lower median incomes (\$46,667 FV vs. \$63,617 citywide), higher percentage of persons below the poverty line (14.9% vs. 12.7%), higher percentage of Hispanic and non-white residents (26% vs. 13.9%), and lower education attainment (84.4% high school or higher

vs. 91.2%). Areas with high equity scores are typically in need of extra resources in order to support a thriving community, and additionally tend to have historically suffered from a lack of investment (or conversely, outright disinvestment) of services and/or infrastructure.

Map 2: Heavy Industrial Districts and Adjacent Neighborhood Equity Scores



While it is clear that the Fruit Valley Neighborhood is from an equity standpoint more vulnerable to adverse effects from fuel-related uses such as risk of fire, explosion, emissions, etc. (as well as from other industrial uses), it is important to understand the net changes resulting from the proposed code changes. For example, no new bulk fossil fuel facilities will be allowed. Minor increases in capacity to existing facilities would be allowed, but only if the facility is brought up to current seismic standards and approval of fire and spill response plans is obtained, which is more protective of the neighborhood than the current situation. New small fossil fuel facilities (with about the same capacity as most gas stations) would be allowed but would have to meet a long list of development standards, including a prohibition on any new facility that is closer than 1,000 feet (nearly a quarter of a mile) from any residential zoning district and compliance with seismic codes. The proposed ordinance would allow new cleaner fuel facilities of up to 1 million gallons, but such facilities would also be subject to the same long list of development standards and the spacing requirement from residentially-zoned properties. All new or expanded fossil fuel facilities would be subject to the highest level of local public review through a conditional use permit process as well as an environmental review for specific impacts to nearby uses.

The proposed code changes contemplate the maximum amount of public notice and opportunity to comment on all proposed new fuel storage and handling uses (large and small), through the

conditional use permit process. The conditional use permit process involves review by the City's Hearings Examiner on the merits of the application at a public hearing and is a process that allows for specific impacts from a proposed use to be understood and for conditions of approval to be placed on the use. Examples of other conditional uses in the IH, Heavy Industrial District include regional parks, research and development uses, retail uses between 40,000 and 60,000 square feet, office uses between 40,000 and 60,000 square feet, cemeteries, heliports, and detention and post-detention facilities.

Advocates from the environmental community have expressed support for requiring all new and expanded facilities to be reviewed under a conditional use permit process to allow for specific analysis of impacts to nearby properties.

The Port and several tenants which currently handle fuel products have advocated for less process and greater certainty for the approval of small fossil/cleaner fuel facilities by making them a *limited use*, which does not involve a public hearing but would be subject to the proposed development standards such as complying with seismic codes, obtaining approval of a fire response plan and spill response plan, being located no closer than 1,000 feet to any residential district, etc. The City's Climate Action Team, which is working on the City's Climate Action Strategy (on a parallel track to the Fossil Fuel Code Changes), has also expressed support for less process for small cleaner fuel uses in order to foster a transition away from traditional fossil fuels.

The Planning Commission indicated that in order to incentivize small cleaner fuel facilities without compromising public safety, small cleaner fuel facilities should be allowed as a limited use while retaining small fossil fuel facilities as a conditional use in the IH District.

The first draft of proposed fossil fuel code changes placed greater emphasis on public safety than climate action and included a prohibition on new cleaner fuel facilities since such fuels, while better from an emissions standpoint, have similar flammable properties as traditional fossil fuels and can also negatively impact surface and groundwater in the event of a major spill.

Throughout the City's public outreach process, staff heard from several stakeholders including the City's Climate Action Team that the code changes should allow a pathway for cleaner fuel facilities in order to support a transition away from less-climate friendly fossil fuel sources. In response to this issue and based on input from the City Council and Planning Commission, the draft ordinance would allow new cleaner fuel facilities up to 1 million gallons, subject to a conditional use permit (CUP) and specific development standards including minimum distance from a residential district, compliance with seismic codes, approval of spill and fire response plans, approval of a greenhouse gas (GHG) emissions study, financial assurance in the event of an accident, and an annual report requirement to the City regarding type and quantity of fuels received or shipped by the facility.

Participants from the environmental community expressed support for not allowing new cleaner fuel facilities at all, in order to promote public safety and minimize potential risks to the environment, and to allow for more advancements in the "new fuel" economy and technology to occur.

The recommended allowance for large new cleaner fuel facilities in the IH, Heavy Industrial District subject to a conditional use permit would create a pathway by which alternative, lower-carbon fuels could be made available as substitutes for the standard gasoline and diesel that is used by consumers today. According to research by the City's Climate Action Team, today, over 95% of registered vehicles in the State of Washington are non-electric; even if all new vehicle sales in America were 100% electric by 2035, the research suggests that it will still take around 30 years for all of the existing fossil fuel vehicles to cycle off of the roads. Making low-carbon alternatives to standard gas and diesel available would enable Vancouver to make significant carbon reductions and air quality improvements immediately, instead of relying solely on the steady (but slow) transition to electrification. (This approach is encoded into WA state law via the Clean Fuels Standard, which goes into effect in January of 2023) Additionally, Option B would enable the use of hydrogen fuels – a growing zero-emission technology already widespread in California that offers a clean substitution for the most heavily polluting vehicles on the road – while Option A would not.

Allowing for new cleaner fuels is supported by the City's Climate Action Team, Port, WSPA, and tenants in the Port which currently handle fossil fuels, however some proponents of allowing cleaner fuel facilities feel the proposed regulations – in particular the requirement for a conditional use permit - would be too restrictive, which may create an unintentional barrier to a transition away from fossil fuels.

Given the Council's clear commitment regarding advancing its Climate Action Strategy, staff believes that a more forward-looking approach is to allow new cleaner fuel storage and handling facilities in the IH District as currently proposed. As more information becomes available regarding specific types of cleaner fuel that are more (or less) desirable, the ordinance could always be revisited at a future date. Regarding whether the approach is too restrictive (by requiring a CUP), planning staff have concluded that a conditional use permit process is appropriate, since the exact size, location, type of fuel and potential specific impacts to nearby properties would not be known until an application is submitted, and given the proposed maximum size and potential impacts from such facilities, the public should have an opportunity to weigh in on such applications at a public hearing.

V. PLANNING COMMISSION REVIEW AND RECOMMENDATION:

The Planning Commission held a total of five public workshops at which proposed changes to the development code were discussed. Following a public hearing on September 13, 2022, the Commission voted 3-1 to recommend Council approval of the proposed code changes which are now in ordinance format. A copy of the draft minutes from the September 13, 2022 public hearing is attached as Exhibit J.

VI. RECOMMENDED ACTION: Adoption of the proposed ordinance to VMC Title 20 Land Use and Development Code per Exhibit A.

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Attachments:

- Exhibit A Ordinance Amending VMC Title 20, Land Use and Development Code, regarding Fossil Fuel Uses and Development Standards
- Exhibit B Initial Moratorium Ordinance
- Exhibit C SEPA Determination of Nonsignificance (DNS)
- Exhibit D Initial SEPA Checklist dated August 16, 2021
- Exhibit E SEPA Comment Letter from Western States Petroleum Association dated August 30, 2022
- Exhibit F SEPA Comment Letter from Alliance for Community Engagement, dated August 30, 2022
- Exhibit G SEPA Comment Letter from Port of Vancouver, dated August 30, 2022
- Exhibit H Revised SEPA DNS dated September 6, 2022 with City Response to SEPA Comments
- Exhibit I Public Comments Received
- Exhibit J Draft Planning Commission Minutes of 9/13/22 Public Hearing