

ORDINANCE No. \_\_\_\_\_

**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 to 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.

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First introduced at a regular meeting of the City Council of the City of Richmond held January 11, 2022 and finally passed and adopted at a regular meeting held \_\_\_\_\_ by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

\_\_\_\_\_  
CLERK OF THE CITY OF RICHMOND

(SEAL)

Approved:

\_\_\_\_\_  
Mayor

Approved as to form:

\_\_\_\_\_  
City Attorney

Attachment: Exhibit A: Draft Zoning Text Amendments