

## RESOLUTION NO. 21-23

### A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF RICHMOND RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF RICHMOND ADOPT AN ORDINANCE AMENDING ARTICLE 15.04.615 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. ("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;

**WHEREAS**, at the time of adoption of the 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;

**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 Ordinance No. 05-20 N.S.;

**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;

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

**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;

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

**WHEREAS**, the settlement agreement provides that City staff shall present an amendment to RMC Article 15.04.615 to the Planning Commission and City Council for their consideration;

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

**WHEREAS**, if the City Council adopts the proposed amendments, 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;

**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;

**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;

**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 amendment to Chapter 15.04.615 of the Richmond Municipal Code shown in Exhibit A to this Resolution and incorporated herein by reference; and

**WHEREAS**, the Planning Commission has considered the agenda report, all public comments, and the proposed amendment to Chapter 15.04.615 as set forth in Exhibit A of this Resolution and the applicable provisions of the Richmond Municipal Code ("the Record");

**NOW THEREFORE BE IT RESOLVED**, that the Planning Commission hereby recommends that the City Council adopt an ordinance amending Article 15.04.615 to extend the amortization period for nonconforming land uses related to the storage and handling of coal and petroleum coke to December 31, 2026, and makes the following findings as required by RMC Section 15.04.814.050:

**A. The proposed amendment is consistent with the General Plan.**

Supporting Statement of Fact: Criteria Satisfied. The proposed ordinance is consistent with and supports the goals outlined in the Health and Wellness Element of the City's General Plan. For example, the ordinance 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 proposed ordinance 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 proposed ordinance 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 Planning Commission finds that the proposed ordinance is necessary for public health, safety, and welfare, and will be of benefit to the public. Specifically, the Planning Commission finds that the proposed ordinance and the provisions of the settlement agreement that it would trigger would reduce particulate matter emissions by requiring the implementation of additional dust control measures, and that it would 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 amendments would provide the Levin Terminal with additional time to transition to other, less polluting commodities. By facilitating this transition, the proposed amendments 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 Zoning Amendments are only changes to the Zoning Ordinance text.

**NOW THEREFORE BE IT RESOLVED**, that the Planning Commission hereby recommends to the City Council that it adopt an ordinance amending Article 15.04.615 of the Richmond Municipal Code as shown in Exhibit A to this Resolution to extend the amortization period for nonconforming uses related to coal and petroleum coke storage and handling to December 31, 2026.

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I HEREBY CERTIFY that the foregoing Resolution was adopted by the Planning Commission of the City of Richmond at a regular meeting held on December 2, 2021.

Ayes:

Noes:


Absent:

Abstain:

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David Tucker  
Planning Commission Chair

Approved as to Form:



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James Atencio  
Senior Assistant City Attorney

Attachment: Exhibit A: Article 15.04.615, as amended