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190978

Emergency Ordinance

*Readopt remanded Ordinance No. 189807 to restrict bulk fossil fuel terminals (amend Title 33)

Passed

Amended by Council

The City of Portland ordains:

Section 1. The Council finds:

1. The rapid development of fossil fuel resources in the western U.S. and Canada has resulted in numerous facility and infrastructure projects proposed to transport coal, diluted bitumen, natural gas, propane, or other fossil fuels through the West Coast.
2. Fossil fuels pose risks to safety, health, and livability, including mobility of people, other freight, and other commercial vehicles.
3. The State of Oregon 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.
4. In the past, both the HUU-AY-AHT First Nation peoples and the Makah tribe shared similar stories of lost land and peoples as a result of these earthquakes and tsunamis which scientific research has matched with Japanese tsunami records and on-the-ground geologic field research to reconstruct the Cascadia earthquake of 1700. This research shows 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.
5. Many of the city's buildings and critical infrastructure were built before the city's seismic exposure was widely understood. This infrastructure includes Oregon's primary liquid fuel storage facilities, the Critical Energy Infrastructure (CEI) hub, which is located in northwest Portland and receives 90 percent of the state's liquid fuel supply either via pipeline or marine vessel. Most of the storage tanks within the CEI hub have been built prior to any design and performance lessons learned from the damaging Great Alaskan earthquake of 1964 and the many

Introduced by

[Commissioner Carmen Rubio](#)

Bureau

[Planning and Sustainability](#)

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Requested Agenda Type

Time Certain

Changes City Code

other documented earthquakes that followed.

6. The CEI hub is vulnerable to failure in the event of subduction zone earthquake. A 2012 Oregon Department of Geology and Mineral Industries (DOGAMI) Earthquake Risk Study for Oregon's Critical Energy Infrastructure Hub report states that a magnitude 8 or 9 Cascadia Subduction Zone earthquake would impact the CEI Hub with: ground shaking; liquefaction (soil behavior phenomenon in which a saturated sand softens and loses strength during strong earthquake ground shaking); lateral spreading (where surficial soil permanently moves laterally due to earthquake shaking); landslides; co-seismic settlement (where the ground surface is permanently lowered due to seismic shaking); and bearing capacity failures (when the foundation soil cannot support the structure it is intended to support). The study also notes that, at the time, only three existing storage tanks were known to have addressed liquefaction vulnerabilities.
7. The Portland Bureau of Emergency Management's Mitigation Action Plan (MAP) identifies how natural hazard events like floods, landslides, and earthquakes might affect the City of Portland. The Portland area has experienced numerous earthquakes in the past, ranging from Magnitude 4.5 to 9.0. Portland is certain to experience seismic events in the future. Many of Portland's fossil fuel storage tanks were built before seismic design requirements in building codes were adopted.
8. Most of Portland's industrial districts, especially those areas with river access, are located in areas with a high probability of liquefaction, as documented by the 2018 DOGAMI Earthquake Regional Impact Analysis. Fossil fuel infrastructure poses considerable risks in the event of a major earthquake as documented by the Portland Bureau of Emergency Management's 2016 Critical Energy Infrastructure Hub Study; the 2012 DOGAMI Earthquake Risk Study for Oregon's Critical Energy Infrastructure Hub report; the 2019 Portland State University Critical Energy Infrastructure Hub Fuel Tank Seismic Assessment, and the 2022 Multnomah County/City of Portland Impacts of a Cascadia Subduction Zone Earthquake on the CEI Hub. Continuing to allow the unlimited increase in fossil fuel storage in a high-risk area increases the risk to the surrounding industrial district, the Willamette River and Portland as a whole.
9. Coal contains toxic heavy metals, including mercury, arsenic and lead, and exposure to these toxic heavy metals is linked to cancer, birth defects and other health problems.
10. A Union Pacific train carrying oil from North Dakota to Tacoma derailed in Mosier, Oregon on June 3, 2016, spilling 42,000 gallons of crude oil, igniting a fire, and leading to the evacuation of one-quarter of the town's residents.
11. Tribal communities in Oregon and Washington have expressed concerns about the safety risks of fossil fuel infrastructure and the

related threats to human health, cultural heritage, and environmental quality.

12. The City's 2015 Climate Action Plan (adopted by Resolution 37135) identifies the need to establish a "fossil fuel export policy that considers lifecycle emissions, safety, economics, neighborhood livability and environmental impacts" (Climate Action Plan, action 3G, page 69).
13. In Resolutions 36959 and 36962 adopted in 2012, the Council expressed opposition to coal trains traveling through Portland until a programmatic, comprehensive, and area-wide Environmental Impact Statement and comprehensive Health Impact Assessment are completed.
14. Resolution 37168, adopted November 12, 2015, expressed the City Council's opposition to the "expansion of infrastructure whose primary purpose is transporting or storing fossil fuels in or through Portland or adjacent waterways." It also expressed the Council's intent not to restrict improvements in safety, efficiency, or seismic resilience; the provision of service directly to end users; or infrastructure that will accelerate the transition to non-fossil fuel energy sources.
15. Resolution 37289, adopted May 20, 2017, established a goal to meet 100 percent of community-wide energy needs, including transportation fuels, with renewable energy by 2050.
16. With Resolution 37494, adopted June 30, 2020, the City Council declared that a human-made climate emergency threatens our city, our region, our state, our nation, humanity, and the natural world, and that such an emergency calls for an immediate mobilization effort initiating greater action, resources, and collaboration that prioritizes frontline communities to restore a safe climate.
17. The Climate Emergency Declaration (Resolution 37494) further resolved that the City of Portland will adopt new policies and development standards to further prevent expansion of new fossil fuel infrastructure, reduce fossil fuel consumption, reduce the risk to the community and the environment, and encourage the adoption and use of clean, renewable fuels, including but not limited to updating the Renewable Fuel Standard.
18. The 2035 Comprehensive Plan sets policy direction (Policies 4.75 and 4.76) to encourage disaster-resilient development and specifically to reduce natural hazard risks to critical energy and transportation infrastructure in Portland Harbor.
19. The first step in making the current situation better is to ensure that the situation does not get worse. Continuing to allow the unlimited increase in fossil fuel terminal storage tank capacity within a high-risk area increases the risk to the surrounding industrial district and the Willamette River. The Fossil Fuel Terminal Zoning ("FFTZ") amendments

are a regulatory approach to limit the size of new fossil fuel terminals and prohibit the expansion of fossil fuel storage tank capacity at existing fossil fuel terminals, with limited exceptions, which will be an improvement compared to the current regulations that allow for unlimited growth in fossil fuel terminals.

20. These Zoning Code amendments create a new land use category with development standards that limit the size of new terminals and prohibit the expansion of fossil fuel storage tank capacity, with some exceptions, at existing terminals, but allow for their continued operation as a limited use.
21. The amendments promote major benefits to human health and safety, environmental health, and resilience, with minor impacts to economic prosperity and equity.
22. The code restrictions on fossil fuel terminal development will limit potential financial risks from a major accident involving fossil fuel infrastructure.
23. In Resolution 37168, the City Council expressed support for accelerating the transition to non-fossil fuel energy sources. As part of that transition, the Oregon Department of Environmental Quality (ODEQ) is implementing the Oregon Clean Fuels Program, which requires a 10 percent reduction in average carbon intensity by 2025. The amendments will support a transition to a reliable, low-carbon energy infrastructure by designating existing terminals as a limited use, which allows the terminals to continue to operate and invest in facilities to add storage capacity for renewable fuels to provide reliable low-carbon fuels to help meet the City and State carbon emissions reduction goals.
24. The City Council has considered applicable policies, as described in Exhibit A, to determine that this ordinance complies with the 2035 Comprehensive Plan and on balance is equally or more supportive of the goals and policies of the 2035 Comprehensive Plan than the current regulations. In reaching this conclusion, City Council has weighed and balanced competing policy directions. There are some policies where the amendments are equally supportive—not more or less so—but there are other policies where the amendments are more supportive and the code changes better embody the direction in the Comprehensive Plan as a whole. In particular, the Council finds that:
 - A. The purpose of this ordinance is to limit the risk of damage from a catastrophic Cascadia Subduction Zone earthquake by limiting the expansion of fossil fuel storage tank capacity in an area with high susceptibility to liquefaction, while at the same time allowing the existing terminals to make safety upgrades; to serve future regional needs; and facilitate a transition to cleaner fuels to reduce carbon emissions.

B. Portland's fossil fuel terminals handle 90 percent of the fossil fuel for the State of Oregon, as well as serving Southwest and Eastern Washington and Idaho and will continue to do so for the foreseeable future as part of a transition to a zero carbon economy. These changes support the retention of existing fossil fuel terminals by designating them as a limited use that allows the terminals to continue to operate and invest in upgrades and supports opportunities for growth through exceptions. Thus, the fossil fuel storage tank capacity that exists today in Portland, with the allowed exceptions, is adequate to serve the future regional market.

C. These changes and restrictions only apply to a narrowly defined new land use category, Bulk Fossil Fuel Terminals, and do not have a significant effect on the other allowed uses in industrial and employment zones. There are no changes proposed to the Comprehensive Plan or Zoning Map that will impact the overall size or intensity of development in the industrial and employment areas of Portland.

25. Ordinance No. 188142 was appealed to the Oregon Land Use Board of Appeals (LUBA). LUBA issued a decision upholding two assignments of error in *Columbia Pacific Building Trades Council et al v. City of Portland*, LUBA Case No. 2017-001, July 19, 2017).

26. LUBA's decision was appealed to the Oregon Court of Appeals. LUBA's decision was affirmed in part and reversed in part in *Columbia Pacific Building Trades Council v. City of Portland*, 289 Or App 739 (2018).

27. The Oregon Court of Appeals decision was appealed to the Oregon Supreme Court, which denied review in *Columbia Pacific Building Trades Council v. City of Portland*, 363 Or 390 (2018).

28. On October 5, 2018, LUBA remanded *Columbia Pacific Building Trades Council et al v. City of Portland*, LUBA Case No. 2017-001 to address assignments of error that LUBA sustained and were either affirmed or not challenged on appeal to the Court of Appeals.

29. On December 18, 2019, the City adopted Ordinance No. 189807 to readopt the Fossil Fuel Terminal Zoning Amendments to address issues raised in LUBA's remand order. The Zoning Code amendments were similar to the changes adopted in 2016, except for a few minor adjustments to reconcile the Fossil Fuel Terminal Zoning Amendments with subsequent changes to the Zoning Code that were adopted since 2016.

30. Ordinance No. 189807 was appealed to the Oregon Land Use Board of Appeals (LUBA). LUBA issued a decision remanding the ordinance for additional findings in *Columbia Pacific Building Trades Council et al v. City of Portland II*, LUBA Case No. 2020-009, October 20, 2020).

31. A general notification of the June 30, 2022, City Council public hearing on the remand of Ordinance No. 189807 was sent to the City's legislative notice list, the fossil fuel terminal property owners, and the parties to the appeal.
32. On June 30, 2022, the Portland City Council held a public hearing and received testimony on the re-adoption of the fossil fuel terminal zoning restrictions. The record was open for written testimony until July 7, 2022.
33. The City Council concludes that large fossil fuel terminals represent a risk to people, property and the natural environments that the City Council finds as a compelling reason to limit future risk by limiting the size of new facilities and prohibiting the expansion fossil fuel storage tank capacity at existing facilities. Continuing to allow an unlimited increase in storage capacity at FFTs in a moderate to high-risk area would be less supportive of the 2035 Comprehensive Plan than adopting the FFTZ amendments.

NOW THEREFORE, The Council directs:

- A. Adopt Exhibit A as additional findings.
- B. Amend Title 33, Planning and Zoning, as shown in Exhibit B, Fossil Fuel Terminal Zoning Amendments, Remand Report, dated June 8, 2022.
- C. Adopt the commentary in Exhibit B, Fossil Fuel Terminal Zoning Amendments, Remand Report, dated June 8, 2022, as legislative intent and further findings.
- D. Adopt Exhibit C. LUBA Record for *Columbia Pacific Building Trades Council et al v. City of Portland II*, LUBA Case No. 2020-009, as additional evidence.
- E. The Bureau of Planning and Sustainability shall report to City Council no later than December 31, 2023 on the implementation of this ordinance, including:
 - the number and description of any requests by existing terminal operators to upgrade and replace storage capacity at their facilities;
 - the number and description of building permits issued for fossil fuel tanks between 125,000 and 2 million gallons;
 - the trends in fossil fuel energy use and non-fossil energy use in Oregon;
 - the status of local and state regulatory proceedings that may improve seismic resilience of fossil fuel storage infrastructure;

and

- information on compliance with the Oregon Clean Fuels Program.

F. City Bureaus, including BDS, PBEM and Fire, shall work with the State of Oregon to develop policy options to require seismic upgrades of storage tanks within a firm deadline for replacement of older, unsafe tanks.

Section 2.

The Council declares that an emergency exists due to the fact that Portland is currently at risk of a major earthquake; therefore, this ordinance shall be in full force and effect from and after August 31, 2022, at 11:59 P.M.

Section 3.

If any section, subsection, sentence, clause, phrase, diagram, designation, or drawing contained in this Ordinance, or the plan, map or code it adopts or amends, is held to be deficient, invalid or unconstitutional, that shall not affect the validity of the remaining portions. The Council declares that it would have adopted the plan, map, or code and each section, subsection, sentence, clause, phrase, diagram, designation, and drawing thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, phrases, diagrams, designations, or drawings contained in this Ordinance, may be found to be deficient, invalid or unconstitutional.

Documents and Exhibits

 [Amended Ordinance - Strikethrough / Underline Version](#) (44.69 Kb)

 [Exhibit A - As Amended](#) (1.56 Mb)

 [Exhibit B](#) (2.51 Mb)

 [Exhibit C](#) (325.94 Kb)

 [Supporting Documents](#) (325.77 Kb)

An ordinance when passed by the Council shall be signed by the Auditor. It shall be carefully filed and preserved in the custody of the Auditor (City Charter Chapter 2 Article 1 Section 2-122)

Passed as amended by Council
August 24, 2022

Auditor of the City of Portland
Mary Hull Caballero

Impact Statement

Purpose of Proposed Legislation and Background Information

The purpose of this legislation is to re-adopt the Fossil Fuel Terminal Zoning Amendments, which amends the Zoning Code to create a new land use category (Bulk Fossil Fuel Terminals) with development standards to limit fossil fuel storage tank capacity. The amendments prohibit expansion of fossil fuel storage tank capacity at existing fossil fuel terminals (FFTs) and limit new terminal development to 2 million gallons of fossil fuel storage tank capacity. The storage of coal at Bulk Fossil Fuel Terminals is prohibited.

The City of Portland initially adopted these amendments on December 14, 2016. That decision was appealed to the Land Use Board of Appeals (LUBA), and subsequently to the Oregon Court of Appeals and the Oregon Supreme Court. Eventually, LUBA remanded the original ordinance back to the City of Portland for additional findings.

On December 18, 2019, the City adopted Ordinance No. 189807 to readopt the Fossil Fuel Terminal Zoning Amendments to address issues raised in LUBA's remand order. That decision was appealed to the LUBA. Again, LUBA remanded the City's decision to address specific policy issues: impacts the code amendments could have on the future demand for natural gas; the City's comparative economic advantage; any potential shift in transportation modes that could impact the City's multimodal transportation system; the role FFTs play in serving other businesses in the area; potential adverse impacts on the continued viability of Portland as a major center for import and export of industrial products.

The ordinance, supporting findings and evidence in the record provide the necessary information to re-consider adopting the Fossil Fuel Terminal Zoning Amendments.

Financial and Budgetary Impacts

There are no financial or budgetary impacts associated with this ordinance. This legislation is a code amendment and uses existing General Fund funded positions for staff time associated with the project.

Community Impacts and Community Involvement

The previous City Council found that the re-adoption of the code amendments was a continuation of the initial legislative proceeding. Accordingly, the City Council determined that it was appropriate to bring the ordinance directly back to City Council, given the extensive public process that happened as part of the initial adoption of the ordinance in 2016. In 2019, the City Council held a public hearing before re-adopting the code amendments. Given that no substantive changes to the Zoning Code are required to address the remand issues, this ordinance is being brought directly to Council with a notice for the public hearing.

100% Renewable Goal

n/a

Agenda Items**603 Time Certain in [June 29-30, 2022 Council Agenda](#)**

Continued

Motion to adopt the Bureau of Planning & Sustainability clarifying amendments as shown in Exhibit B: Moved by Rubio and seconded by Wheeler. Vote not called.

Continued to July 21, 2022 at 2:00 p.m. Time Certain.

Oral record is closed. Written record will remain open until July 7, 2022 at 5:00 p.m.

657 Time Certain in [July 20-21, 2022 Council Agenda](#)

Postponed

Postponed to August 24, 2022 at 2:00 p.m. Time Certain.

726 Time Certain in [August 24, 2022 Council Agenda](#)

Passed As Amended

Motion to adopt the Bureau of Planning & Sustainability clarifying amendments as shown in Exhibit B: Moved by Rubio and seconded by Wheeler. (Y-4)

Motion to amend the Ordinance and Exhibit A: Moved by Rubio and seconded by Wheeler. (Y-4)

Commissioner Jo Ann Hardesty Absent

Commissioner Mingus Mapps Yea

Commissioner Carmen Rubio Yea

Commissioner Dan Ryan Yea

Mayor Ted Wheeler Yea