

09/11/14

ORDINANCE NO. U-4090

AN ORDINANCE declaring an emergency and adopting a six-month moratorium on applications for permits for the establishment or expansion of all crude petroleum facilities that will accept crude oil except those vested or contingently vested as of the effective date of this ordinance, and providing that the moratorium will take effect immediately upon passage.

WHEREAS, on June 3, 2014, the Vancouver City Council adopted Resolution M-3821 that “calls on municipalities, agencies and officials to deny all permits for new facilities that will result in an increase in the transportation of Bakken crude oil through Clark County until such time as there is a consensus among the industry and regulators as to the appropriate method of safely transporting Bakken crude oil and a proven track record that demonstrates the safety of the methodology”; and

WHEREAS, the Vancouver City Council will use its power to deny such permits to the extent allowed under state law in accordance with Resolution M-3821; and

WHEREAS, as described in SR 113-14, City staff has received indications that applications for additional crude oil facilities or the expansion of existing crude oil facilities may be forthcoming; and

WHEREAS, the development of the Bakken oil field, mostly in North Dakota, has caused increased demand for oil facilities on the Pacific Coast of the United States, particularly in the Pacific Northwest; and

WHEREAS, the establishment of additional crude oil facilities will increase the transportation of Bakken crude oil and will result in an increase in the transportation of that commodity through the city; and

WHEREAS, human error, acts of nature, and unforeseen disasters are beyond the control of measures proposed for the transportation of Bakken crude oil and could have devastating effects on the entire community; and

WHEREAS, the Washington State Energy Facility Site Evaluation Council (“EFSEC”) provides state expertise in reviewing large petroleum facilities but the EFSEC has no jurisdiction to review facilities for the transport of fewer than 50,000 barrels per day over marine waters or facilities for processing petroleum with a daily capacity below 25,000 barrels per day; and

WHEREAS, the rail lines that will carry volatile crude oil run through and by City of Vancouver neighborhoods, parks, the I-5 corridor, commercial and industrial areas, the Columbia River, creeks and other natural areas; and

WHEREAS, according to the Association of American Railroads (“AAR”) the volume of crude oil shipped by rail increased from 9,500 carloads in 2008 to 400,000 car loads in 2013; and

WHEREAS, the volume of petroleum transported by rail through Vancouver is expected to increase in the future; and

WHEREAS, City staff has received information that indicates additional crude petroleum facilities are planned including the possible expansion of the Tesoro/Savage proposal now before EFSEC; and

WHEREAS, this massive intensification of petroleum uses in Vancouver will increase the risk of possible derailments, spills, explosions and fallout and will pose a serious threat to the community; and

WHEREAS, the primary source of the petroleum anticipated to be transported by rail through Vancouver is from the Bakken formation, which the U.S. Department of Transportation (DOT) Pipeline and Hazardous Materials Safety Administration (“PHMSA”) has determined may be more flammable than traditional heavy crude oil; and

WHEREAS, PHMSA’s 2013 investigation into the transportation of Bakken oil, known as Operation Classification, showed that crude oil taken from cargo tanks en route to rail loading facilities was not properly classified on numerous occasions leading DOT to issue an emergency order requiring shippers to test Bakken oil and classify it as a packing group I or II commodity; and

WHEREAS, the fatal incident in Lac-Magantic, Quebec, Canada, resulted in the loss of forty-seven lives, as well as buildings, and required evacuation of 1,000 residents; and

WHEREAS, in November 2013, a derailment of a unit train in Aliceville, Alabama, caused a crude oil spill when tank cars ruptured and caught fire; and

WHEREAS, Galveston Bay, Texas, recently experienced a maritime collision that emptied more than 150,000 gallons of crude oil into the bay, and the Columbia River would almost certainly be used as a major shipping channel for any new crude petroleum facilities in Vancouver; and

WHEREAS, in December 2013, a derailment of a BNSF unit train carrying crude oil caused a spill and explosion causing the evacuation of most of Casselton, North Dakota; and

WHEREAS, in January 2014, a freight train carrying crude oil in the province of New Brunswick, Canada, derailed causing a spill and fire resulting in the evacuation of 45 homes in a 1.25-mile radius surrounding the crash; and

WHEREAS, in April 2014, a freight train transporting crude oil in Lynchburg, Virginia, derailed causing a spill and fire and resulted in the evacuation of a portion of the downtown area and a spill into the James River; and

WHEREAS, on May 9, 2014, a train carrying crude oil derailed near La Salle, Colorado, resulting in a spill; and

WHEREAS, on July 24, 2014, a BNSF oil train that was traveling only 5 mph derailed in Seattle, Washington; and

WHEREAS, according to the PHMSA more than 1.15 million gallons of crude oil was spilled in U.S. rail incidents in 2013; and

WHEREAS, the increase in the production of Bakken crude oil has placed such a demand on tank cars that older DOT 111 cars are being used to transport Bakken crude oil; and

WHEREAS, according to AAR, approximately 92,000 DOT-111 tank cars are used to move flammable liquids, such as crude oil and ethanol, with only approximately 14,000 (15%) of those tank cars being built to the latest industry safety standards; and

WHEREAS, in light of the incident in Lac-Megantic, Quebec, Canada, the Canadian government has ordered the phase-out within three years of the use of older DOT 111 tank cars that do not provide necessary protections against punctures, failures, and explosions for the transportation of crude oil; and

WHEREAS, while, PHMSA has not yet ordered the phase-out of older DOT 111 tank cars; and

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WHEREAS, oil tank cars built since 2011 are designed to the CPC 1232 standard, but the rupture of a tank car in Lynchburg, Virginia, when it was only traveling 24 mph indicates that this standard may be inadequate; and

WHEREAS, it will be at least five to seven years before new model tank cars ordered by BNSF could be delivered, and, even after they are delivered, BNSF will have to accept older cars from shippers transporting crude oil as long as those cars meet minimum safety requirements; and

WHEREAS, even today, the design of those new cars is unsettled and has no proven track record of safe utilization; and

WHEREAS, in January 2014, the National Transportation Safety Board stated “Because there is no mandate for railroads to develop comprehensive plans or ensure the availability of necessary response resources, carriers have effectively placed the burden on remediating environmental consequences of an accident to local communities along their routes”; and

WHEREAS, the City of Vancouver is studying the demands placed upon its emergency responders by crude oil trains traveling through the City and has not yet identified the risk posed nor the training needed to respond to that risk; and

WHEREAS, the City has concerns regarding the potential impacts of expanded crude petroleum train traffic upon the residents of neighborhoods adjacent to rail lines used to transport Bakken crude oil and all of its residents as well as visitors to the City of Vancouver; and

WHEREAS, the National Transportation Safety Board in January 2014 recommended that trains carrying Bakken crude oil be rerouted to avoid populated areas where technically feasible; and

WHEREAS, the City has a paramount interest in the health, safety, and welfare of its citizens, and the City Council believes that the development of additional and expanded crude petroleum facilities is contrary to the health, safety, and welfare of its citizens and business community; and

WHEREAS, pursuant to RCW 36.70A.390 and RCW 35.63.200, a public hearing shall be held within 60 days of the passage of this ordinance;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

Section 1. Legislative Findings. The recitals set forth above are adopted as the legislative findings of the City Council of the City of Vancouver in support of adoption of the moratorium imposed by this ordinance.

Section 2. Moratorium Imposed. Pursuant to the provisions of RCW 36.70A.390 and RCW 35.63.200, a moratorium is hereby enacted prohibiting until March 10, 2015, within the City of Vancouver any applications for permits for the establishment or expansion of all crude petroleum product facilities that will accept crude oil except those facilities that are vested or contingently vested as of the effective date of this ordinance.

Section 3. Public Hearing. Pursuant to RCW 36.70A.390 and RCW 35.63.200, the City Council sets the regular meeting of October 20, 2014, at 7:00 p.m. as the date and time for hearing on this moratorium. The City Clerk is directed to cause appropriate notice of such hearing to be given.

Section 4. Severability – Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

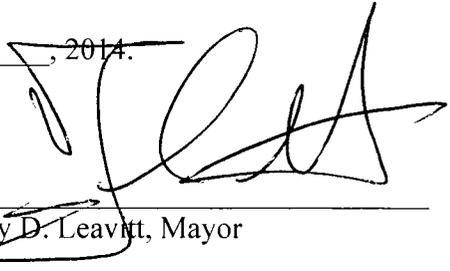
(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Vancouver Municipal Code, this ordinance is deemed to control.

Section 5. Effective Date and Notice. 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. The City Clerk is directed to publish a summary hereof including the title at the earliest possible publication date.

PASSED by the following vote: 7-0

Ayes: Councilmembers *Topper, McEnerny-Oguz, Turley, Hansen,*
Nayes: Councilmembers *Burkman, Smith, Mayor Leavitt*
Absent: Councilmembers

SIGNED this 11th day of September, 2014.



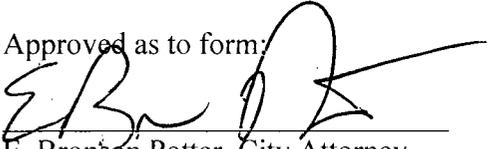
Timothy D. Leavitt, Mayor

Attest:



R. Lloyd Tyler, City Clerk
By Carrie Lewellen, Deputy City Clerk

Approved as to form:



E. Bronson Potter, City Attorney

SUMMARY

ORDINANCE NO. M-4090

AN ORDINANCE declaring an emergency and adopting a six-month moratorium within the City of Vancouver on applications for permits for the, establishment or expansion of all crude petroleum product facilities that will accept crude oil except those facilities that are vested or contingently vested as of the effective date of this ordinance and providing that the moratorium will take effect immediately upon passage.

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