

15 - 07

ORDINANCE NO. _____

AN ORDINANCE ADOPTING A SIX MONTH MORATORIUM PROHIBITING THE LICENSING, LOCATION, AND PERMITTING OF FACILITIES FOR THE WHOLESALE STORAGE AND SALES OF LIQUID, SOLID, OR GASIFIED PETROLEUM IN THE CITY OF ABERDEEN, STATE OF WASHINGTON.

WHEREAS, in the first quarter of 2015 alone there have been several explosions and fires of rail-borne tank cars carrying Bakken crude oil and many of these cars were of the “safety modified” type of car designed to carry that product safely;

WHEREAS, local jurisdictions are not capable of adequately dealing with the explosions and fires involving petroleum-laden rail cars;

WHEREAS, the city of Aberdeen has very serious concerns about the safety of the public, public services, and public infrastructure, all of which would be placed in serious jeopardy by the addition of new wholesale liquid, solid, and gasified petroleum storage and sales facilities;

WHEREAS, federal regulations announced the first week of April 2015 governing rail cars hauling flammable crude petroleum prohibit public disclosure of train movement and location information;

WHEREAS, RCW 35.22.690 authorizes adoption of moratoriums by First Class cities;

WHEREAS, the adoption of this ordinance is exempt from the requirements of a threshold determination under the State Environmental Policy Act pursuant to WAC 197-11-880;

WHEREAS, discussion regarding the establishment of zoning laws, both in city council and with the public, could take many weeks to reach a policy decision; **NOW, THEREFORE**,

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ABERDEEN:

SECTION 1. MORATORIUM ADOPTED. Pursuant to RCW 35.22.690 and RCW 35.63.200, a moratorium is hereby imposed prohibiting the licensing, location, and permitting of facilities for the wholesale storage and sales of liquid, solid, or gasified petroleum within the city limits of Aberdeen.

SECTION 2. DURATION OF MORATORIUM. This moratorium shall remain in effect for six months from the effective date of this ordinance unless terminated earlier as pursuant to the term as set forth in Section 4.

SECTION 3. EXISTING FACILITIES AND PERMIT APPLICATIONS. This moratorium shall not affect existing storage facilities previously permitted by the city or vested rights of applicants who have filed completed permit applications with the city prior to the effective date of this ordinance.

SECTION 4. PUBLIC HEARING DATE. A public hearing shall be held pursuant to RCW 35.63.200 during the regular city council meeting of Wednesday, July 22, 2015, at 7:15 pm, in the Aberdeen city council chambers.

SECTION 5. SEVERABILITY. Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any other person or situation.

SECTION 6. EFFECTIVE DATE. This ordinance is hereby declared and designated a public emergency ordinance necessary for the protection of public health and safety and for the protection of public property and shall be effective immediately upon its adoption.

SECTION 7. PUBLICATION BY SUMMARY. The Finance Director is authorized and directed to publish the attached summary in lieu of this ordinance.

PASSED and APPROVED this ____ day of _____, 2015.

Bill Simpson, Mayor

ATTESTED:

Kathryn Skolrood, Finance Director

15 - 09

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE OPERATION OF WHEELED ALL-TERRAIN VEHICLES (WATV) IN THE CITY OF ABERDEEN AND ADOPTING A NEW CHAPTER IN THE ABERDEEN MUNICIPAL CODE REGULATING THE USE OF WATV WITHIN CITY LIMITS.

WHEREAS, RCW 46.09.455(1)(d) prohibits WATV and Off-Road Vehicle (ORV) operation on streets and highways within the city limits unless authorized by local ordinance;

WHEREAS, the city of Aberdeen has adopted the state Model Traffic Ordinance, including those sections which regulate WATV definitions, licensing, equipment, and operation (WAC 308-330-197), and, pursuant to RCW 46.09.360, has determined that additional restrictions should be imposed as a condition of WATV operation within the city limits; NOW, THEREFORE,

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ABERDEEN:

SECTION 1. NEW CODE CHAPTER ADOPTED. The following chapter is hereby added to the Aberdeen Municipal Code:

Chapter 10.18 AMC – Wheeled All-Terrain Vehicles

Section 10.18.010 – Definitions.

Section 10.18.020 – WATV Operation on City Streets.

Section 10.18.030 – Penalties.

Section 10.18.010 – Definitions. “Wheeled All-Terrain Vehicle (WATV)” means a four wheeled vehicle where operator and passenger sit side by side in the vehicle, manufactured primarily for recreational non-highway all-terrain use, as further defined by the state Model Traffic Ordinance adopted by the city of Aberdeen (Chpt. 10.04 AMC).

Section 10.18.020 – WATV Operation on City Streets. Any person operating a WATV on city streets or alleys must comply with the following requirements, in addition to all state requirements for registration, operation, WATV use permits, and equipment laws:

A. WATV operators must be at least 18 years of age and must possess a current valid driver's license; no parent or legal guardian of a person under the age of 18 shall knowingly allow the underage person to operate a WATV in violation of this ordinance;

RESOLUTION No. 2015 - _____

A RESOLUTION ADOPTING FINDINGS OF FACT IN SUPPORT OF THE SIX MONTH MORATORIUM IMPOSED ON CRUDE OIL FACILITIES IN THE CITY OF ABERDEEN, WASHINGTON.

WHEREAS, the city council enacted Ordinance 6588 on July 22, 2015, pursuant to RCW 35.22.690 and RCW 35.63.200, imposing a six month moratorium prohibiting the licensing, location, and permitting of facilities for the wholesale storage and sales of crude oil within the city limits of Aberdeen;

WHEREAS, the city council held a public hearing on August 26, 2015, as required by RCW 35.63.200, prior to adopting findings of fact in support of the moratorium; **NOW, THEREFORE**,

BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF ABERDEEN that the following findings of fact are adopted in support of the moratorium imposed by Ordinance 6588:

1. Local jurisdictions are not capable of adequately dealing with the explosions and fires involving petroleum-laden rail cars.
2. In the first quarter of 2015 alone there have been several explosions and fires of rail-borne tank cars carrying crude oil and many of these cars were of the "safety modified" type of car designed to carry that product safely.
3. The city of Aberdeen has very serious concerns about the safety of the public, public services, and public infrastructure, all of which would be placed in serious jeopardy by the addition of new wholesale liquid, solid and gasified petroleum storage and sales facilities; the Findings of Fact adopted by the City of Vancouver, Washington, on October 20, 2014, (attached and incorporated by reference), to the extent they detail the hazards associated with the transportation of crude oil and the development of crude oil facilities are hereby adopted by the city of Aberdeen.
4. 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. Hoquiam has received permit applications for crude oil facilities and additional permits in the Aberdeen area may be forthcoming.
5. 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. the construction of crude oil facilities present an unacceptable risk in the shorelines of Aberdeen and the Grays Harbor estuary.

6. The location of the city's current industrial zones would require that crude oil be transported by rail or tanker trunks through city of Aberdeen neighborhoods, parks, commercial and industrial areas, the shorelines of the Wishkah River, Chehalis River, creeks and through other critical areas.

7. The city of Aberdeen 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 or the training needed to respond to that risk.

8. 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, the economy of the entire Grays Harbor estuary, and is inconsistent with the City's newly adopted planning goals of reconnecting its commercial, retail, and residential communities with the waterfront.

9. This moratorium will allow the City time to conduct a public process to consider amendments to Title 17 and other Titles of the Aberdeen Municipal Code to address the issues posed by increased transportation of crude oil and development of crude oil facilities in Aberdeen.

10. On September 1, 2015, the City SEPA Responsible Official determined that the Moratorium is exempt from SEPA under WAC 197-11-800 19) the City may proceed with the exempt moratorium pursuant to WAC 197-11-305 and WAC 197-11-070.

BE IT FURTHER RESOLVED, that the Aberdeen City Council has determined, after public hearing and the adoption of the above Findings of Fact, that Ordinance 6588 as it was adopted on July 22, 2015, shall remain in effect without change.

PASSED and APPROVED on September 9, 2015.

ATTESTED:

Bill Simpson, Mayor

Kathryn Skolrood, Finance Director

10/20/14

FINDINGS OF FACT IN SUPPORT OF MORATORIUM CRUDE OIL FACILITIES PURSUANT TO RCW SECTIONS 36.70A.390 AND 35.63.200.

1. On June 2, 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”.
2. The City will not process permit applications for crude oil facilities during the pendency of this moratorium.
3. City staff has received an application for a crude oil facility and has indications that applications for additional crude oil facilities or the expansion of existing crude oil facilities may be forthcoming.
4. 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.
5. Other crude oil production elsewhere in the United States and Canada might pose dangers similar to Bakken crude oil.
6. The establishment of additional crude oil facilities of Bakken oil and other crude oil will result in an increase in the transportation of such through the city.

7. Human error, acts of nature, and unforeseen disasters are beyond the control of measures proposed for the transportation of Bakken and other crude oil and could have devastating effects on the entire community.
8. The Washington State Energy Facility Site Evaluation Council ("EFSEC") provides state expertise in reviewing large petroleum facilities, but the EFSEC has determined it has no jurisdiction to review certain facilities.
9. The rail lines 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.
10. 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.
11. The volume of petroleum transported by rail through Vancouver is expected to increase in the future.
12. City staff has received an application for the NuStar project that might result in additional crude petroleum facilities in Vancouver, and other facilities may be planned, including the possible expansion of the Tesoro/Savage proposal now before EFSEC.
13. 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.

14. 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.
15. 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.
16. The fatal incident in Lac-Mégantic, Quebec, Canada, resulted in the loss of forty-seven lives and buildings and required evacuation of 1,000 residents.
17. In November 2013, a derailment of a unit train in Aliceville, Alabama, caused a crude oil spill when tank cars ruptured and caught fire.
18. 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.
19. 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.
20. 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.

21. 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.
22. In May 9, 2014, a train carrying crude oil derailed near La Salle, Colorado, resulting in a spill.
23. On July 24, 2014 a BNSF oil train that was traveling only 5 mph derailed in Seattle, Washington which indicates that derailments are possible even at very slow speeds.
24. According to the PHMSA more than 1.15 million gallons of crude oil was spilled in U.S. rail incidents in 2013.
25. 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.
26. 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.
27. In light of the incident in Lac-Mégantic, 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.
28. PHMSA has not yet ordered the phase-out of older DOT 111 tank cars.
29. 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.

30. 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.
31. Even today, the design of those new cars is unsettled and has no proven track record of safe utilization.
32. 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 on local communities along their routes".
33. 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.
34. 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.
35. The National Transportation Safety Board in January 2014 recommended that trains carrying Bakken crude oil be rerouted to avoid populated areas where technically feasible.

36. 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.
37. The Vancouver City Council approves of staff's interpretation of crude oil to mean "any petroleum product that requires further refinement before its intended use by consumers."
38. Pursuant to RCW 36.70A.390 and RCW 35.63.200 the Council held a public hearing on October 20, 2014, to adopt these findings in support of the moratorium for crude oil facilities in the City of Vancouver.
39. This moratorium will allow the City time to consider amendments to Title 20 and other Titles of the Vancouver Municipal Code to address the issues posed by increased rail shipments of crude oil through Vancouver.
40. This moratorium will allow time for a public process to review and comment on any proposed changes to address the issues posed by increased rail shipments of crude oil through Vancouver.
41. This moratorium will help prevent further deterioration of the status quo by preventing the establishment or expansion of facilities that would accept crude oil except as vested or contingently vested.
42. The Vancouver City Council determines, after public hearing, that Ordinance M-4090 as adopted on September 11, 2014, shall remain in effect without change.

The City Council of the City of Vancouver adopts the foregoing findings.

PASSED on motion by the following vote: 6-0

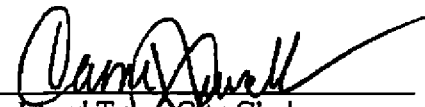
Ayes: Councilmembers Topper, McEnerny-Ogle, Hansen, Paunkman,
Nayes: Councilmembers Smith, Mayor Leavitt

Absent: Councilmembers Turley

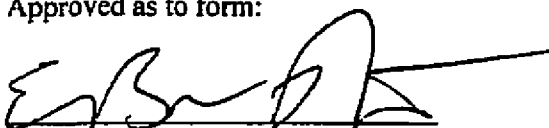
SIGNED this 20th day of October, 2014.


Timothy B. Leavitt, Mayor

Attest:


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

Approved as to form:


E. Bronson Potter, City Attorney