



May 1, 2019

Portland City Council  
1221 SW 4th Ave  
Portland, OR 97204

**Re: Urgent Need for Action on Fossil Fuel Infrastructure in Portland**

Dear Mayor Ted Wheeler, Commissioner Hardesty, Commissioner Fritz, Commissioner Eudaly, and Commissioner Fish:

Following enormous public opposition to a proposal to construct a propane export terminal at the Port of Portland in 2015, the City of Portland has embraced a trajectory of mitigating the health, safety, economic, environmental, and climate risks of the fossil fuel industry while accelerating the transition away from fossil fuel infrastructure to energy efficiency and renewable energy. Portland voters have shown time and time again that they desire bold action on climate at the ballot box and in the streets.

While we appreciate and celebrate past action, there is still much more to be done.

It is burdensome having to mobilize to stop yet another large scale fossil fuel infrastructure project after a clear mandate from Portland’s residents for the City to “oppose[] oil-by-rail transportation through and within the City of Portland[,]”<sup>1</sup>, “actively oppose expansion of infrastructure whose primary purpose is

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<sup>1</sup> Portland City Council Resolution No. 37164.

transporting or storing fossil fuels in or through Portland or adjacent waterways[.]”<sup>2</sup> and “[l]imit fossil fuel distribution and storage facilities to those necessary to serve the regional market.”<sup>3</sup>

Given the urgency of the Zenith oil terminal expansion, the immediate danger it and other fossil fuel infrastructure poses to Portland’s residents, and the fact that there is presently nothing preventing the issuance of permits for new large fossil fuel facilities and expansions, we propose the following roadmap for dealing with the immediate and long-term risks of fossil fuel infrastructure in our community.

### **(1) Enact a Moratorium on City Permits for New Fossil Fuel Infrastructure**

In 2015 and 2016, members of our coalition repeatedly warned city staff about the dangers of increased fossil fuel pass-through when the Fossil Fuel Terminal Zoning Amendments (“FFTZA”) were being developed. Even if the FFTZA were in full effect right now, the Zenith expansion would likely fall outside of its scope. Nevertheless, this expansion and others like it could have been prevented if Portland City Council and staff had fully considered the issue at the time, updated code accordingly, and denied requests for permit extensions and exemptions for projects inconsistent with binding city policy.

As it will likely take time to map out code amendments that will adequately implement Resolution No. 37164 (City of Portland oil train policy) and Resolution No. 37168 (City of Portland fossil fuel infrastructure policy)<sup>4</sup>, Council **should adopt an immediate moratorium on the permitting and construction of all new fossil fuel infrastructure** while more comprehensive code changes are adopted.

In the wake of the ruling from the Oregon Court of Appeals in *Columbia Pacific v. City of Portland*, 289 Or App 789 (2018), we believe that the City of Portland has strong legal grounds to enact a moratorium on new and outstanding permits for all new fossil fuel infrastructure while permanent code options are developed. In upholding the constitutionality of Portland’s Fossil Fuel Terminal Zoning Amendments, the Court recognized the City of Portland’s legitimate local interest in mitigating the risks of fossil fuel development, writing:

We conclude that the the amendments provide legitimate putative local benefits, which include limiting the number of very large fossil-fuel terminals in a moderate- to high-risk earthquake liquefaction zone. The amendments also seek to reduce the risk of potential explosions, accidents, and fire at large fossil-fuel terminals and to reduce the similar risk of a catastrophic accident from the larger trains that transport fossil fuels to the terminals. In addition, the amendments seek to protect local public health and limit exposure to coal containing heavy metals linked to cancer, birth defects, and other problems. In considering the amendments, the city noted the recent 2016 derailment of a train carrying oil through the Columbia Gorge, which led to a large oil spill, fire, and the evacuation of a significant portion of the City of Mosier. [...] [T]he amendments do seek to “effectuate [ ] legitimate local public interest[s]” in placing some limits on the extent of that risk and seeking to promote local health and safety. “[H]ealth and safety considerations [may] be weighed in the process of deciding the threshold question of whether the conditions entailing [the] application of the dormant Commerce Clause are present.

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<sup>2</sup> Portland City Council Resolution No. 37168.

<sup>3</sup> City of Portland Comprehensive Plan Policy 6.48 “Fossil fuel distribution”

<sup>4</sup> See Section (4) below.

*Id.* at 751 (footnote omitted describing the Court’s refusal to decide “whether the city’s interest in restricting the use of its land to prevent potential large fuel-export facilities and, thus, possibly reduce greenhouse gasses, is a legitimate local interest”).

In recent years, the Portland City Council has made significant and unanimous findings about the many dangers of the fossil fuel industry that support a moratorium on new fossil fuel infrastructure.

Notably, the King County Board of Commissioners recently approved a 6-month moratorium on fossil fuel infrastructure including “applications for the establishment of new or expansion of existing, which is increasing the size, quantity or scope, of major fossil fuel facilities” while staff develops code options for permanent regulations. This approach has also been utilized in Vancouver, WA and Whatcom County, WA, in advance of permanent code.

In Portland, a moratorium should prohibit all city permits for new fossil fuel infrastructure and freeze the Zenith construction process until the more comprehensive code adjustment called for in Resolution No. 37168 is completed.

## **(2) Stop the Zenith Oil Terminal Expansion**

We appreciate the sentiments from the Mayor and members of City Council declaring opposition to the Zenith expansion project. Given that the impacts of this project have not been fully investigated, Council must take urgent action to halt construction before the project is operational. To this end, we recommend a series of actions.

At a minimum, construction at Zenith and any subsequent change in operations should be halted until there is a full permit review. **The Portland City Council should declare an emergency and issue a stop work order until the full impacts of the project have been assessed and the ability of first responders to adequately respond to a worst case scenario disaster or spill on site or from oil transport is ensured.** Zenith has apparently misinformed both city officials and the press about its activities and given the general lack of information available, creating enormous uncertainty about potential risk to the general public. Furthermore, every bureau with permitting responsibilities and safety oversight should review previously granted code exemptions and current permit applications, especially with regard to the materials that will be stored at this facility.

Next, Zenith should be called upon to answer questions on the record about its expansion project. Representations made in private meetings with city staff are not adequate and the community deserves a full hearing. Portland City Council Resolution No. 37164 declares that “the City of Portland will request that the railroad companies and/or oil companies provide representatives to meet periodically with local citizen groups and local governmental officials to address local concerns regarding oil trains through Portland.” **In line with this binding city policy, Council should hold a public hearing on the project and invite Zenith to join. If they decline, the Council should utilize its authority to compel attendance and the production of accurate and detailed information about the project.** To

investigate and understand the range of impacts and concerns from this project, all relevant government bureaus should engage in a comprehensive project review including a public process with full community engagement.

Finally, the City should formally request action from the Oregon Department of Environmental Quality, including (1) ensuring that review of Zenith's air quality permit renewal include a health-risk assessment and public hearing in order to adequately account for the full scope of impacts and increases in toxic emissions, and (2) ensuring that Zenith performs the required disaster preparedness exercises with regard to crude oil.

### **(3) Reinstitute the Fossil Fuel Terminal Zoning Amendments**

Our understanding is that Bureau of Planning and Sustainability staff are aiming for a Summer 2019 remand process for the FFTZA. We look forward to working with you to make sure that the FFTZAs are re-implemented in substantially similar form to what was adopted in 2016 and without allowances for expansion of existing terminals. As we learned from testimony during public hearings on the FFTZA, terminal operators do not consider expansion allowances to be sufficient inducements to invest in seismic resilience upgrades. Instead, City officials should investigate code options to shift the costs of risks posed by these dangerous facilities onto the companies that operate them.<sup>5</sup>

### **(4) Adopt Code that Implements Commitments of Resolution No. 37164 (City of Portland oil train policy) and Resolution No. 37168 (City of Portland fossil fuel infrastructure policy)**

In order to protect Portland's residents and environment from additional risk from the fossil fuel industry, the City must act swiftly to restrict the expansion of fossil fuel development while continuing to implement the commitments of Resolution No. 37164 (City of Portland oil train policy), Resolution No. 37168 (City of Portland fossil fuel infrastructure policy), and the FFTZA.

Resolution No. 37168 directed City bureaus "to examine existing laws, including those related to public health, safety, building, electrical, nuisance, and fire codes, and develop recommendations to address fossil fuels that strengthen health and safety[.]" The Bureau of Planning and Sustainability produced the FFTZA concept, but it is unclear whether other bureaus actually followed this important directive. And, while the FFTZAs address large fossil fuel infrastructure projects, smaller storage and transfer facilities have not been addressed, nor have projects (i.e. Zenith) that would increase the pass-through of fossil fuels in Portland.

### **(5) Develop Plans for a Fossil Fuel Infrastructure Phase Out**

Existing fossil fuel infrastructure poses a dual existential threat to Portlanders in the form of seismic vulnerability and contributions to climate change. It is now time to start developing plans to phase out existing fossil fuel infrastructure and speed the transition to energy efficiency and renewable energy in

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<sup>5</sup> See Section (5) below.

line with the latest climate science and the City's renewable energy goals, which call for 100% community-wide renewable energy for all energy uses by 2050.

In 2018, the Oregon Department of Geology and Mineral Industries released a shocking report estimating that impacts from a Cascadia Subduction Zone earthquake could "include as many as 27,000 injuries ranging from minor to fatal, as many as 85,000 people needing shelter, and as much as \$37 billion in building damages." This study followed the agency's 2012 report that found a magnitude 8 or 9 Cascadia Subduction Zone earthquake could have catastrophic consequences for the critical oil and gas storage tanks and electrical infrastructure in Northwest Portland's industrial area. Current building codes do not adequately address the seismic deficiencies of existing fossil fuel infrastructure. Despite the glaring oversights and appalling safety issues highlighted in the 2012 report, the industries that make their home in Northwest Portland -- many of which are fossil fuel-oriented -- have simply refused to make safety improvements.

In 2016, two close calls -- the Mosier oil train derailment and a gas rupture and explosion in northwest Portland -- demonstrated the clear and present dangers of fossil fuel infrastructure to our community. Presently, the public continues to be exposed to enormous financial burdens and known risks to the health, safety and lives of all who live within the blast radius of dangerous infrastructure.

The latest report from the Intergovernmental Panel on Climate Change (IPCC) gives our civilization under 11 years to cut greenhouse gas emissions by 45 percent below 2010 levels to have a chance of keeping warming below 1.5° Celsius. In practice, this means that we must prevent all new fossil fuel infrastructure and drastically reduce existing current carbon emissions just to have a fighting shot at avoiding the worst impacts of climate change.

Fossil fuels pose inherent risks throughout all stages of its their life cycles. Today, we have safer renewable energy alternatives that do not pose the same risks to our local health and safety, our local airshed and waterways, or to the climate. City policy acknowledges these risks and we have already made commitments toward risk mitigation and transition away from dirty energy. In June 2017, the City of Portland passed a resolution establishing "a goal to meet 100% of community-wide energy needs with renewable energy by 2050"<sup>6</sup> including transitioning our transportation system from fossil fuels to renewable energy. To that end, the resolution calls for "accelerating the transition to electric vehicles," to "significantly extend[ing] service miles and public transit access across City neighborhoods, and complete a rapid transition to an electric fleet." As the City, County, Metro, and Tri-Met make plans for a renewably powered transportation system, the existing facilities at the Fossil Fuel Terminal Hub are at risk of becoming stranded assets and abandoned infrastructure. The City should begin a process to plan a managed decline of existing fossil fuel infrastructure in line with past policy commitments and climate science.

One potentially useful policy for the City to pursue is **Fossil Fuel Risk Bonds** to ensure that the polluter pays for a worst case scenario spill, explosion, or other disaster, and ultimately to pay for clean up when

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<sup>6</sup> See Resolution No. 37289

these facilities close as part of a transition to a renewably powered society. In the case of fossil fuel infrastructure sited in seismically dangerous areas, we know of no state or federal preemption that would prevent the City from requiring financial assurances in the form of insurance or bonding to guarantee coverage in the event of an accident or natural disaster. In fact, failing to require sufficient financial assurances for activities that add well-understood degrees of risk to expected catastrophic events is political negligence.

**(6) Conclusion**

We appreciate everything that the City of Portland is doing to take action on climate and stop the threats of fossil fuel infrastructure. We are looking to you to boldly lead on protecting communities from the imminent threat posed by the Zenith Oil Terminal Expansion. We look forward to working together to address this health and safety issue and prevent future problems of this type.

Sincerely,

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