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Title: AN ORDINANCE relating to fossil fuel facilities and non-hydroelectric generation facilities; and amending Ordinance 10870, Section 337, as amended, and K.C.C. 21A.08.100, Ordinance 10870, Section 443, as amended, and K.C.C. 21A.22.050 and Ordinance 12020, Section 17, and K.C.C. 27A.30.060.

Sponsors: Sarah Perry, Dave Upthegrove

Indexes:

Code sections: 21A.08.100 -, 21A.22.050 -, 27A.30.060 - *

Attachments: 1. Ordinance 19601, 2. 2023-0092 Fossil Fuel Risk Bonds Report, 3. 2023-0092 SEPA Environmental Checklist FINAL_REVISED, 4. 2023-0092 SEPA DNS TD -FFF Financial cov, 5. 2023-0092 Summary of Public Engagement on Executive's Proposal, 6. 2023-0092_SR_FFF-NHG, 7. 2023-0092--Seattle Times - Invoice #52117 - \$236.38, 8. FFF Financial coverage-SEPA-Addendum2-041923-signed, 9. 19601--2023-0092--Seattle Times - Order #56321 - \$165.02

Date	Ver.	Action By	Action	Result
5/2/2023	1	Metropolitan King County Council	Passed	Pass
2/28/2023	1	Local Services and Land Use Committee	Recommended Do Pass Consent	Pass
2/21/2023	1	Metropolitan King County Council	Introduced and Referred	

Clerk 02/16/2023

AN ORDINANCE relating to fossil fuel facilities and non-hydroelectric generation facilities; and amending Ordinance 10870, Section 337, as amended, and K.C.C. 21A.08.100, Ordinance 10870, Section 443, as amended, and K.C.C. 21A.22.050 and Ordinance 12020, Section 17, and K.C.C. 27A.30.060.

STATEMENT OF FACTS:

1. In 2020, King County adopted new regulations for fossil fuel facilities and non-hydroelectric generation facilities in unincorporated King County. Those regulations placed limits on the development and operation of these facilities in order to address impacts to the residents of King County.

2. Operation of fossil fuel facilities carries risk of explosion, leaks, spills and pollution of air and water. King County has responsibility for upholding the public health, safety and welfare of all residents while mitigating and preparing for natural and human-caused disasters, protecting and preserving natural systems and supporting economic development.

3. At the time these regulations were adopted, the council directed the executive to undertake a study assessing risks associated with explosions, leaks, pollution and other potential hazards resulting from fossil fuel facilities and related uses, as well as an evaluation of the adequacy of existing financial assurance mechanisms in reducing the county's economic and financial risks associated with these uses.

4. In 2022, the executive transmitted a report on the required study, which found that fossil fuel facilities and non-hydroelectric generation facilities do pose economic and financial risk to the county. The report recommended adopting regulations requiring fossil fuel facilities and non-hydroelectric generation facilities to carry some form of financial responsibility to cover damages that could be caused by these facilities.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance 10870, Section 337, as amended, and K.C.C. 21A.08.100 are hereby amended to read as follows:

A. Regional land uses.

P-Permitted Use C-Conditional Use S-Special Use		RESOURCE			R U R A L	RESIDENTIAL			COMMERCIAL/INDUSTRIAL				
SIC#	SPECIFIC USE	IA	F	M	RA	UR	R1-8	R12-48	NB	CB	RB	O	I (15)
*	Jail						S	S	S	S	S	S	S
*	Jail Farm/Camp	S	S		S	S							
*	Work Release				S19	S19	S	S	S	S	S	S	
*	Public Agency Control Facility		S		S	S					S		P
*	Public Agency Facility		S		S3					S3	S3	S3	C4
*	Search and Rescue Facility				C30 S30								
*	Hydroelectric Facility		C14 S		C14 S	C14 S	C14 S						

*	Non-hydroelectric Generation Facility	C12 S29	C12 S29	C12 S((28))29	C12 S29	C12 S29	C12 S29	C12 S29	C12 S29	C12 S29	C12 S29	C12 S29	P12 S29
*	Renewable Energy Generation Facility	C28	C28	C	C	C	C	C	C	C	C	C	C
*	Fossil Fuel Facility												S27
*	Communication Facility (17)	C6c S	P		C6c S	C6c S	C6c S	C6c S	C6c S	P	P	P	P
*	Earth Station Facility	P6b C	P		C6a S	C6a S	C6a S	C6a S	P6b C	P	P	P	P
*	Energy Resource Recovery Facility		S	S	S	S	S	S	S	S	S	S	S
*	Soil Recycling Facility		S	S	S								C
*	Landfill		S	S	S	S	S	S	S	S	S	S	S
*	Transfer Station			S	S	S	S	S	S	S	S		P
*	Wastewater Treatment Facility				S	S	S	S	S	S	S	S	C
*	Municipal Wastewater Production	S	P13 S	S	S	S	S	S	S	S	S	S	S
*	Airport/Heliport	S7	S7		S	S	S	S	S	S	S	S	S
*	Regional Transportation Authority Facility					P25							
*	Rural Public Infrastructure Maintenance				C23								P
*	Transit Bus Facility						S	S	S	S	S	S	P
*	Transit Commuter Facility				P26		P26	P26	P26	P26	P26	P26	P26
*	School Bus Facility				C5 S20	C5 S	C5 S	C5 S	S	S	S	S	P
7948	Racetrack				S8	S8	S8	S8	S8	S8	S8	S8	S24
*	Regional Motel Facility												P
*	County Fairgrounds Facility				P21 S22								
*	Fairground									S	S		S
8422	Zoo/Wildlife		S9		S9	S	S	S		S	S		
7941	Stadium/Arena										S		S
8221-8222	College/University	P10	P10		P10 C11 S18	P10 C11 S18	P10 C11 S	P10 C11 S	P10 C11 S	P	P	P	P
*	Zoo Animal Facility	P16	P16		P16								

B. Development conditions.

1. Except technical institutions. See vocational schools on general services land use table, K.C.C.

21A.08.050.

2. Except arboretum. See K.C.C. 21A.08.040, recreation/cultural land use table.

3. Except weapons armories and outdoor shooting ranges.

4. Except outdoor shooting range.

5. Only in conjunction with an existing or proposed school.
- 6.a. Limited to no more than three satellite dish antennae.
 - b. Limited to one satellite dish antenna.
 - c. Limited to tower consolidations.
7. Limited to landing field for aircraft involved in forestry or agricultural practices or for emergency landing sites.
8. Except racing of motorized vehicles.
9. Limited to wildlife exhibit.
10. Only as a reuse of a public school facility subject to K.C.C. chapter 21A.32.
11. Only as a reuse of a surplus nonresidential facility subject to K.C.C. chapter 21A.32.
12. Limited to gas extraction as an accessory use to a waste management process, such as wastewater treatment, landfill waste management, livestock manure and composting processes.
13. Excluding impoundment of water using a dam.
14. Limited to facilities that comply with the following:
 - a. Any new diversion structure shall not:
 - (1) exceed a height of eight feet as measured from the streambed; or
 - (2) impound more than three surface acres of water at the normal maximum surface level;
 - b. There shall be no active storage;
 - c. The maximum water surface area at any existing dam or diversion shall not be increased;
 - d. An exceedance flow of no greater than fifty percent in mainstream reach shall be maintained;
 - e. Any transmission line shall be limited to a:
 - (1) right-of-way of five miles or less; and
 - (2) capacity of two hundred thirty KV or less;
 - f. Any new, permanent access road shall be limited to five miles or less; and

g. The facility shall only be located above any portion of the stream used by anadromous fish.

15. For I-zoned sites located outside the urban growth area designated by the King County Comprehensive Plan, uses shown as a conditional or special use in K.C.C. 21A.08.100.A, except for waste water treatment facilities and racetracks, shall be prohibited. All other uses, including waste water treatment facilities, shall be subject to the provisions for rural industrial uses in K.C.C. chapter 21A.12.

16. The operator of such a facility shall provide verification to the department of natural resources and parks or its successor organization that the facility meets or exceeds the standards of the Animal and Plant Health Inspection Service of the United States Department of Agriculture and the accreditation guidelines of the American Zoo and Aquarium Association.

17. The following provisions of the table apply only to major communication facilities. Minor communication facilities shall be reviewed in accordance with the processes and standard outlined in K.C.C. chapter 21A.27.

18. Only for facilities related to resource-based research.

19. Limited to work release facilities associated with natural resource-based activities.

20. Limited to projects which do not require or result in an expansion of sewer service outside the urban growth area, unless a finding is made that no cost-effective alternative technologies are feasible, in which case a tightline sewer sized only to meet the needs of the school bus base and serving only the school bus base may be used. Renovation, expansion, modernization or reconstruction of a school bus base is permitted but shall not require or result in an expansion of sewer service outside the urban growth area, unless a finding is made that no cost-effective alternative technologies are feasible, in which case a tightline sewer sized only to meet the needs of the school bus base.

21. Only in conformance with the King County Site Development Plan Report, through modifications to the plan of up to ten percent are allowed for the following:

a. building square footage;

- b. landscaping;
- c. parking;
- d. building height; or
- e. impervious surface.

22. A special use permit shall be required for any modification or expansion of the King County fairgrounds facility that is not in conformance with the King County Site Development Plan Report or that exceeds the allowed modifications to the plan identified in subsection B.21. of this section.

23. The facility shall be primarily devoted to rural public infrastructure maintenance and is subject to the following conditions:

- a. The minimum site area shall be ten acres, unless:

- (1) the facility is a reuse of a public agency yard; or
 - (2) the site is separated from a county park by a street or utility right-of-way;

- b. Type 1 landscaping as provided in K.C.C. chapter 21A.16 shall be provided between any stockpiling or grinding operations and adjacent residential zoned property;

- c. Type 2 landscaping as provided in K.C.C. chapter 21A.16 shall be provided between any office and parking lots and adjacent residential zoned property;

- d. Access to the site does not use local access streets that abut residential zoned property, unless the facility is a reuse of a public agency yard;

- e. Structural setbacks from property lines shall be as follows:

- (1) Buildings, structures and stockpiles used in the processing of materials shall be no closer than:

- (a) one hundred feet from any residential zoned properties, except that the setback may be reduced to fifty feet when the grade where the building or structures are proposed is fifty feet or greater below the grade of the residential zoned property;

- (b) fifty feet from any other zoned property, except when adjacent to a mineral extraction or

materials processing site;

(c) the greater of fifty feet from the edge of any public street or the setback from residential zoned property on the far side of the street; and

(2) Offices, scale facilities, equipment storage buildings and stockpiles shall not be closer than fifty feet from any property line except when adjacent to M or F zoned property or when a reuse of an existing building. Facilities necessary to control access to the site, when demonstrated to have no practical alternative, may be located closer to the property line;

f. On-site clearing, grading or excavation, excluding that necessary for required access, roadway or storm drainage facility construction, shall not be permitted within fifty feet of any property line except along any portion of the perimeter adjacent to M or F zoned property. If native vegetation is restored, temporary disturbance resulting from construction of noise attenuation features located closer than fifty feet shall be permitted; and

g. Sand and gravel extraction shall be limited to forty thousand yards per year.

24. The following accessory uses to a motor race track operation are allowed if approved as part of the special use permit:

- a. motocross;
- b. autocross;
- c. skidpad;
- d. garage;
- e. driving school; and
- f. fire station.

25. Regional transit authority facilities shall be exempt from setback and height requirements.

26. Transit comfort facility shall:

- a. only be located outside of the urban growth area boundary;

- b. be exempt from street setback requirements; and
- c. be no more than 200 square feet in size.

27.a. Required for all new, modified or expanded fossil fuel facilities. Modification or expansion includes, but is not limited to:

- (1) new uses or fuel types within existing facilities;
- (2) changes to the type of refining, manufacturing or processing;
- (3) changes in the methods or volumes of storage or transport of raw materials or processed products;
- (4) changes in the location of the facilities on-site;
- (5) replacement of existing facilities;
- (6) increases in power or water demands; or
- (7) increases in production capacity.

b. Before filing an application with the department, the applicant shall hold a community meeting in accordance with K.C.C. 20.20.035.

c. As part of permit application submittal for new, modified or expanded fossil fuel facilities, the applicant shall submit the following documentation:

- (1) an inventory of similar existing facilities in King County and neighboring counties, including their locations and capacities;
- (2) a forecast of the future needs for the facility;
- (3) an analysis of the potential social and economic impacts and benefits to jurisdictions and local communities receiving or surrounding the facility;
- (4) an analysis of alternatives to the facility, including location, conservation, demand management and other strategies;
- (5) an analysis of economic and environmental impacts, including mitigation, of any similar

existing facilities and of any new site(s) under consideration as an alternative to expansion of an existing facility;

(6) an extensive public involvement strategy (~~((which))~~) that strives to effectively engage a wide range of racial, ethnic, cultural~~((;))~~ and ~~((socio-economic))~~ socioeconomic groups, including communities that are the most impacted; ~~((and))~~

(7) considered evaluation of any applicable prior review conducted by a public agency, local government or stakeholder group~~((;))~~; and

~~((d. As part of permit application submittal,))~~ (8) a greenhouse gas impact analysis ~~((shall be))~~ prepared by the applicant ~~((for all proposals for new, modified((;)) or expanded fossil fuel facilities.))~~, ~~((F))~~the results of ~~((this analysis))~~ which shall be used to identify and mitigate the impacts of such facilities.

d.(1) As part of permit application submittal, the applicant shall demonstrate financial responsibility in an amount necessary to compensate for the cost of decommissioning, and for the maximum damages that might occur from an explosion resulting from a worst-case release, as defined in the 40 C.F.R. Sec. 68.3, of flammable gases and flammable liquids.

(2) The amount of financial responsibility necessary to compensate for damages that might occur from an explosion shall be determined by the director based on a study of the maximum potential damages. The study shall:

(a) incorporate the volume of oils, gases, refrigerants and other flammable or explosive chemicals stored, used or generated within the facility;

(b) consider such matters as: the frequency of facility operations; facility layout and vegetation that could cause flammable vapor accumulation; the damages that could result from the explosion to public and private structures onsite and offsite, public infrastructure and environmental resources and functions; and the potential loss of life and injury to persons onsite and to members of the public;

(c) include modeling and disclosure of a nil or very low wind condition vapor cloud explosion

scenario;

(d) be prepared by a person accredited in vapor cloud explosion analysis, or an equally qualified individual as authorized by the director, at the applicant's expense; and

(e) undergo third-party validation by a qualified entity to be hired upon mutual agreement of the applicant and the department, at the applicant's expense.

(3) The amount of financial responsibility necessary to compensate for facility decommissioning shall be determined by the director based on a decommissioning plan for the closure of the facility. The plan shall include, but need not be limited to, the following:

(a) listing of the hazardous substances, as defined in RCW 70A.305.020, that will be stored, handled or generated within the facility; the range of potential release volumes requiring cleanup in the event of failures of technological or safety catchment features; and whether such releases have the potential to contaminate groundwater or surface waters on or adjacent to the site;

(b) the range of cleanup activities that would be required to address such hazardous substances;

(c) detailed estimates of the cost to implement the plan, including conducting cleanup and facility closure, based on the cost of hiring a third party to conduct all activities. All cost estimates must be in current dollars and may not include a net present value adjustment or offsets for salvage value of wastes or other property; and

(d) methods for estimating closure costs.

(4)(a) Financial responsibility shall be provided for the duration of fossil fuel facility operations, to be verified in periodic review of the facilities in keeping with K.C.C. chapter 21A.22. Financial responsibility required by this subsection B.27.e. may be established by any one of, or a combination of, the following methods acceptable to the department:

i. evidence of insurance;

ii. surety bonds issued by a bonding company authorized to do business in the United States; and

iii. other evidence of financial responsibility deemed acceptable by the department.

(b) Self-bonding, as defined in the 30 C.F.R. Sec. 800.5, shall not be an accepted method of providing financial responsibility.

(5) Where enforcement of this subsection B.27.e. would conflict with chapter 36.32 RCW, the director may request the applicant to sign an agreement to complete retention of required financial responsibility consistent with K.C.C. 27A.30.060, in an amount equivalent to that indicated by the study of the damages, prior to the issuance of a clearing and grading permit.

e. New, modified or expanded fossil fuel facilities shall:

(1) not be located within one thousand feet from any schools, medical care facilities, or places of assembly that have occupancies of greater than one thousand persons;

(2) not be located within two hundred fifty feet from a regulated wetland or aquatic area, except when a larger buffer is required under K.C.C. chapter 21A.24, the buffer in K.C.C. chapter 21A.24 shall apply;

(3) maintain an interior setback of at least two hundred feet;

(4) store fossil fuels completely within enclosed structures, tanks or similar facilities; ~~((and))~~

(5) be accessed directly to and from an arterial roadway; and

(6) comply with all applicable regulations in K.C.C. chapter 21A.22.

28. Limited to uses that will not convert more than two acres of farmland or forestland, or 2.5 percent of the farmland or forestland, whichever is less.

29.a. Before filing an application with the department, the applicant shall hold a community meeting in accordance with K.C.C. 20.20.035.

b. As part of permit application submittal for non-hydroelectric generation facilities, the applicant shall submit the following documentation:

(1) an inventory of similar existing facilities in King County and neighboring counties, including their locations and capacities;

- (2) a report demonstrating that the facility would serve a significant portion of the county~~((;))~~ or metropolitan region or is part of a statewide or national system;
- (3) a forecast of the future needs for the facility;
- (4) an analysis of the potential social and economic impacts and benefits to jurisdictions and local communities receiving or surrounding the facility;
- (5) an analysis of alternatives to the facility, including location, conservation, demand management and other strategies;
- (6) an analysis of economic and environmental impacts, including mitigation, of any similar existing facilities and of any new site~~((s)))~~ or sites under consideration as an alternative to expansion of an existing facility;
- (7) an extensive public involvement strategy which strives to effectively engage a wide range of racial, ethnic, cultural and socioeconomic groups, including communities that are the most impacted; ~~((and))~~
- (8) considered evaluation of any applicable prior review conducted by a public agency, local government or stakeholder group~~((;))~~; and
- ~~((c. As part of permit application submittal,))~~ (9) a greenhouse gas impact analysis ~~((shall be))~~ prepared by the applicant~~((;))~~, ~~((F))~~ the results of ~~((this analysis))~~ which shall be used to identify and mitigate the impacts of such facilities.

c.(1) As part of permit application submittal, an applicant shall demonstrate financial responsibility in an amount necessary to compensate for decommissioning, and for the maximum damages that might occur from an explosion resulting from a worst-case release, as defined in 40 C.F.R. Sec. 68.3, of flammable gases and flammable liquids.

(2) The amount of financial responsibility needed to compensate for damages that might occur from an explosion shall be as determined by the director based on a study of the maximum damages. The study shall:

(a) incorporate the volume of oils, gases, refrigerants and other flammable or explosive chemicals stored, used or generated within the facility;

(b) consider such matters as: the frequency of facility operations; facility layout and vegetation that could cause flammable vapor accumulation; the damages that could result from the explosion to public and private structures onsite and offsite, public infrastructure and environmental resources and functions; and the potential loss of life and injury to persons onsite and to members of the public;

(c) include modeling and disclosure of a nil or very low wind condition vapor cloud explosion scenario;

(d) be prepared by a person accredited in vapor cloud explosion analysis, or an equally qualified individual as authorized by the director, at the applicant's expense; and

(e) undergo third-party validation by a qualified entity to be hired upon mutual agreement of the applicant and the department, at the applicant's expense.

(3) The amount of financial responsibility necessary to compensate for facility decommissioning shall be determined by the director based on a decommissioning plan for the closure of the facility. The plan shall include, but need not be limited to, the following:

(a) listing of the hazardous substances, as defined in RCW 70A.305.020, that will be stored, handled or generated within the facility; the range of potential release volumes requiring cleanup in the event of failures of technological or safety catchment features; and whether such releases have the potential to contaminate groundwater or surface waters on or adjacent to the site;

(b) the range of cleanup activities that would be required to address such hazardous substances;

(c) detailed estimates of the cost to implement the plan, including conducting cleanup and facility closure, based on the cost of hiring a third party to conduct all activities. All cost estimates must be in current dollars and may not include a net present value adjustment or offsets for salvage value of wastes or other property; and

(d) methods for estimating closure costs.

(4)(a) Financial responsibility shall be provided for the duration of facility operations, to be verified in the periodic review of the facilities required by subsection B.29.d. of this section. Financial responsibility required by this subsection B.29.c. may be established by any one of, or a combination of, the following methods acceptable to the department:

i. evidence of insurance;

ii. surety bonds issued by a bonding company authorized to do business in the United States; and

iii. other evidence of financial responsibility deemed acceptable by the department.

(b) Self-bonding, as defined by 30 C.F.R. Sec. 800.5, shall not be an accepted method of providing financial responsibility.

(5) Where enforcement of this subsection B.29.c. would conflict with chapter 36.32 RCW, the director may request the applicant to sign an agreement to complete retention of required financial responsibility consistent with K.C.C. 27A.30.060, in an amount equivalent to that indicated by the study of the damages, prior to the issuance of a clearing and grading permit.

d. Non-hydroelectric generation facilities shall be subject to a periodic review meeting the same standards given in K.C.C. 21A.22.050.

30.a. For all search and rescue facilities:

(1) the minimum lot size is four and one half acres;

(2) structures and parking areas for search and rescue facilities shall maintain a minimum distance of seventy-five feet from interior lot lines that adjoin rural area and residential zones, unless located in a building designated as historic resource under K.C.C. chapter 20.62;

(3) use of the search and rescue facility is limited to activities directly relating to the search and rescue organization, except that the facility may be used by law enforcement and other public emergency responders for training and operations related to search and rescue activities; and

(4) the applicant must demonstrate the absence of existing search and rescue facilities that are adequate to conduct search and rescue operations in the rural area.

b. A special use permit is required when helicopter fueling, maintenance or storage is proposed.

SECTION 2. Ordinance 10870, Section 443, as amended, and K.C.C. 21A.22.050 are hereby amended to read as follows:

A. In addition to the review conducted as part of the annual renewal of a mineral extraction or processing operating permit, coal mine permit or materials processing facility permit, the department shall conduct a periodic review of mineral extraction or processing, coal mine, materials processing facility or fossil fuel facility site design ~~((and))~~, operating standards and financial responsibility at five-year intervals from the date of issuance of the permit.

B. The periodic review is a Type 2 land use decision.

C. The periodic review shall:

1. Determine whether the site is operating consistent with all existing permit conditions and, if not, establish corrective actions; and

2. Apply the most current site design and operating standards to the site through additional or revised permit conditions as necessary to mitigate identifiable environmental, public health and public safety impacts.

SECTION 3. Ordinance 12020, Section 17, and K.C.C. 27A.30.060 are hereby amended to read as follows:

Consistent with chapter 36.32 RCW, King County shall not require any state agency~~((;))~~ or unit of local government~~((, or gas company or electrical company (as those terms are defined in RCW 80.04.010)))~~ to secure the performance of a permit requirement with a financial guarantee as a condition of issuing a permit or approval for a building construction project. The director, however, may ~~((require such))~~ request a state agency or unit of local government~~((, gas company or electric company))~~ to sign an agreement to complete required improvements, or to complete retention of required financial responsibility consistent with K.C.C. 21A.08.100,

and protect the ((€))county's rights and duty to remedy unsatisfactory performance.

SECTION 4. **Severability.** If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.