



## Legislation Details (With Text)

**File #:** 2019-0050      **Version:** 2

**Type:** Ordinance      **Status:** Passed

**File created:** 1/28/2019      **In control:** Metropolitan King County Council

**On agenda:**      **Final action:** 1/28/2019

**Enactment date:**      **Enactment #:** 18866

**Title:** AN ORDINANCE declaring a six-month moratorium prohibiting the establishment of new or expansion of existing major fossil fuel facilities; directing the executive to produce a detailed study to address the issues and circumstances necessitating the moratorium; and declaring an emergency.

**Sponsors:** Dave Upthegrove, Larry Gossett, Jeanne Kohl-Welles, Joe McDermott

**Indexes:** Executive, Moratorium

**Code sections:**

**Attachments:** 1. Ordinance 18866.pdf, 2. 18866 2019-0050 amendment package.pdf, 3. PH notice 2019-0050 re moratorium.doc, 4. 18866 Affidavit of Pub on MORATORIUM- Seattle Times 2-6-19

Date	Ver.	Action By	Action	Result
3/13/2019	2	Metropolitan King County Council	Hearing Held	
1/28/2019	1	Metropolitan King County Council	Passed as Amended	Pass

Clerk 3-11-19

AN ORDINANCE declaring a six-month moratorium prohibiting the establishment of new or expansion of existing major fossil fuel facilities; directing the executive to produce a detailed study to address the issues and circumstances necessitating the moratorium; and declaring an emergency.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

**SECTION 1. Findings:**

A. King County has the authority, under to constitutional police powers, home rule authority, the Shoreline Management Act of 1971, chapter 90.58 RCW, and the Washington state Growth Management Act, including chapter 36.70A RCW ("the GMA"), to establish a moratorium to preclude the acceptance of certain new development applications while the county studies related land use issues.

B. The scientific consensus is that warming of the earth’s climate is occurring at an unprecedented rate

due to anthropogenic greenhouse gas emissions driven by human activities and population growth according to the Intergovernmental Panel on Climate Change Sixth Assessment Report.

C. The state of Washington found significant environmental, economic, public safety and public health impacts resulting from climate change on this state, in both chapter 80.80 RCW and Executive Order No. 14-04.

D. The state of Washington and King County are threatened by impacts resulting from climate change, including warming temperatures, sea level rise on coastal communities, diminishing snowpack and water availability, ocean acidification and forest decline.

E. King County and thirty-nine cities adopted as part of the countywide planning policies shared countywide targets in 2014 to reduce greenhouse gas emissions by fifty percent by 2030 and eighty percent by 2050 against a 2007 baseline.

F. The King County Council unanimously adopted the 2015 King County Strategic Climate Action Plan in November 2015 under Motion 14449, including goals, targets and priority actions to meet these shared emission reduction targets.

G. Fossil fuels, including petroleum, coal and natural gas, are a major source of carbon dioxide, heavy metals, nitrogen oxide and sulfur dioxide, contributing to climate change and environmental pollution.

H. On numerous occasions across the United States and Canada, spills of crude oil from train derailments and tanker ships and natural gas pipeline explosions have caused numerous fatalities and illnesses, substantial loss of property and significant environmental damage.

I. King County has grave concerns about the safety of the public and environment, and the strain on public services and existing infrastructure resulting from the siting and operation of new major fossil fuel facilities.

J. In 2017, movement of crude oil and petroleum products through Washington state by rail had reached fifty-four million barrels of oil compared to no oil being moved by rail before 2012, and one hundred seventy-

seven million barrels moved by pipeline within the state, a twenty-seven percent increase since 2006.

K. New major fossil fuel facilities create significant public health risks, including air polluting resulting in impaired respiratory functions from fine particulates, noise pollution affecting hearing loss and psychological health and exposure to heavy metals and contaminated drinking sources resulting in cancers, premature death and lung and heart diseases.

L. New major fossil fuel facilities pose a threat to King County's ecology, including extensive land disturbing activities that impact natural ecosystems, contamination of surface water and aquifers, sedimentation of rivers and streams, seismic and geological instability and destruction of critical habitat for wildlife.

M. New and expanded major fossil fuel facilities and related land uses will generate increased vehicle trips, noise, dust, debris and odor. The impacts of new major fossil fuel facilities in unincorporated King County has not been fully investigated.

N. In *Quinault Indian Nation v. Imperium Terminal Services LLC*, 187 Wn.2d 460 (2017), the Washington Supreme Court held that the Ocean Resources Management Act ("the ORMA") applied to a land-based petroleum terminal facility. Previous decisions had limited the scope of the ORMA to on-water uses. The court recognized that the ORMA is intended to address environmental threats to Washington's coastal waters and threats posed by increased expansion of the fossil fuel industry along the Pacific Coast and held that it must be applied to a terminal expansion project that would transfer millions of gallons of petroleum products across the threshold of Washington's coast. King County should evaluate whether the ORMA should also be applied to projects within its jurisdiction. If the ORMA is determined not to apply, King County should evaluate whether it should adopt substantively similar local regulations.

O. Local governments have core responsibilities for upholding the public health, safety, and welfare, mitigating and preparing for disasters, protecting and preserving natural systems and supporting economic development.

P. King County is preparing an update of the Comprehensive Plan, scheduled to be adopted in June

2020. As part of the 2020 Comprehensive Plan update, King County is interested in reviewing major fossil fuel facilities and related land uses in unincorporated King County to ensure that the range of impacts from major fossil fuel facilities are identified, avoided and mitigated in order to protect public health and safety, air and water quality, habitats, natural resource lands and other resources and functions.

Q. It is in the public interest that any land use, zoning and development regulations are consistent with the King County Comprehensive Plan, the Shoreline Management Act, the State Environmental Policy Act, the Growth Management Act and other environmental and land use laws.

R. It is in the public interest to establish a moratorium on acceptance of applications for development or expansion of major fossil fuel facilities for six months in order to investigate whether additional regulation is necessary.

S. Under RCW 36.70A.390 and 90.58.590, King County is authorized to adopt a moratorium to implement the Growth Management Act and Shoreline Management Act.

T. It is necessary that this ordinance go into effect immediately in order to avoid a rush of applications for new or expanded development of major fossil fuel facilities.

SECTION 2. A. A six-month moratorium commencing upon the effective date of this ordinance is declared on the acceptance of applications for the establishment of new or expansion of existing, which is increasing the size, quantity or scope, of major fossil fuel facilities in unincorporated King County. An application shall not be accepted and a building permit, occupancy permit, department of public health approval, other development permits or approval of any kind shall not be issued for any of the purposes or activities prohibited by this ordinance. Any applications for land use approvals or other permits that are accepted as a result of error or by use of vague or deceptive descriptions during the moratorium are null and void and without legal force or effect. All lawfully existing uses, structures or other developments may continue to be deemed lawful conforming uses and may continue to be maintained, repaired and redeveloped, so long as the use is not expanded, under the terms of the land use and shoreline rules and regulations in place

at the time of the moratorium. This moratorium shall not apply to uses and facilities necessary to address a bona fide imminent threat to the public health, safety and welfare. This moratorium shall also not apply to uses and facilities necessary for public safety, including, but not limited to, police, fire and rescue agencies.

B. Within sixty days of the effective date of this ordinance, the council shall hold a public hearing on the moratorium.

C. During the moratorium, the executive shall study major fossil fuel facilities, and:

1. Identify the use classification for major fossil fuel facilities that currently exist or should be added in K.C.C. Title 21A. Use classifications shall include, at a minimum, a definition, a standard industrial classification if applicable and, if existing, any associated development conditions and zoning districts where the use is permitted or potentially permitted;

2. Evaluate whether the use classifications are consistent with applicable laws, regulations, adopted policies and permitting and review processes and adequately addresses the impacts and concerns identified in section 1 of this ordinance;

3. Review literature on the impacts of major fossil fuel facilities to local communities and review efforts by other local governments to limit the impacts generated by the proliferation or expansion of these uses;

4. Propose any necessary amendments to the development regulations, permitting processes, environmental procedures and policies, the Comprehensive Plan and shoreline master program that would address the impacts and concerns identified in section 1 of this ordinance;

5. Review performance and maintenance guarantee procedures and recommend any changes deemed necessary for major fossil fuel facility uses;

6. Evaluate the economic and employment opportunities created as energy sources are shifted from fossil fuels to renewable energy sources; and

7. Evaluate existing and planned county-owned and operated fossil fuel facilities for potential health

impacts.

D. The executive shall transmit the results of its study, and a proposed ordinance with any recommended changes to the development regulations, permitting processes, environmental procedures and policies, the Comprehensive Plan and the shoreline master program to the council within six months after the effective date of this ordinance, in the form of a paper original and an electronic copy filed with the clerk of the council, who shall retain the original and provide an electronic copy to all councilmembers, the council chief of staff, the chief policy officer and the lead staff for the mobility and environment committee, or its successor.

E. The executive shall transmit a letter on the status of the study to the council within one-hundred and twenty days of the effective date of this ordinance, in the form of a paper original and an electronic copy filed with the clerk of the council, who shall retain the original and provide an electronic copy to all councilmembers, the council chief of staff, the chief policy officer and the lead staff for the mobility and environment committee, or its successor.

SECTION 3. For the purposes of this ordinance:

A. "Fossil fuels" means petroleum and petroleum products, coal, and natural gas, such as methane, propane and butane, derived from prehistoric organic matter and used to generate energy. Fossil fuels do not include by-products such as asphalt, plastics, fertilizers, paints, or denatured ethanol.

B.1. "Major fossil fuel facilities" means:

- a. large-scale uses and facilities engaged in the wholesale distribution, extraction, refinement or processing of fossil fuels;
  - b. terminals engaged in the bulk movement of fossil fuels (excluding railyards, fuel storage for airports and marine servicing facilities); and
  - c. bulk storage of fossil fuels in excess of two million gallons.
2. "Major fossil fuel facilities" do not provide direct sale or distribution to consumers.

SECTION 4. Severability. If any provision of this ordinance or its application to any person or

circumstance is held invalid or should any portion of this ordinance be preempted by state or federal law or regulation, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected. SECTION 5. The county council finds as a fact and declares that an emergency exists and that this ordinance is necessary for the immediate preservation of public peace, health or safety or for the support of county government and its existing public institutions.