

CONCEPT DOCUMENT - DRAFT ORDINANCE LANGUAGE

ORDINANCE NO. _____

Ordinance Requiring Owners of Certain Facilities in Multnomah County to Provide Financial Assurance Mechanisms for Costs and Damages Caused by the Spill or Release of Oil, Liquid Fuel Products and Hazardous Material

(Language ~~*stricken~~ is deleted; underlined language is new.)

The Multnomah County Board of Commissioners Finds:

A. The Cascadia Subduction Zone (CSZ) is a 600 mile fault-line off the Pacific Coast of North America that has resulted in major earthquakes occurring regularly every 300-500 years. Scientists predict a 37% chance that an earthquake of 7.1+ magnitude and a 10% chance of 9.0+ magnitude will occur in the CSZ within the next 50 years. It is not a question of “if” the CSZ earthquake will happen but “when”.

B. A 2018 study by the Oregon Department of Geology and Mineral Industries estimated that the impacts of a CSZ earthquake in Multnomah County would include as many as 16,647 injuries ranging from minor to fatal, 37,399 people displaced, and up to \$20.537 billion in building damages. The costs of emergency response, cleanup, and remediation after the CSZ will be borne by federal, local, and state governments.

C. The Critical Energy Infrastructure (CEI) Hub is a six-mile stretch of industrial development along the west shore of the Willamette River in the City of Portland. The CEI Hub houses over 630 tanks containing liquid fuel products, oils, and other hazardous materials. 90% of the state’s liquid fuel, and 100% of its aviation fuel, flows through and/or is stored in the CEI Hub. The CEI Hub receives and transports 70% of its fuel through pipeline and 30% via the river.

D. The CEI Hub was built on soil that, during the CSZ earthquake, will become liquefied and be subject to lateral spread, in an area where peak ground velocity and permanent land deformation will be most intense.

E. Spills or releases of oil, liquid fuel, and other hazardous materials present serious risks to human health and safety, the natural environment, and infrastructure. A CSZ or other moderate to major earthquake will cause a significant spill or release of the contents of tanks in the CEI Hub, resulting in substantial damage to Multnomah County’s residents, local environment, and infrastructure.

F. Under ORS 431, Multnomah County is the local public health authority. A core responsibility of the local public health authority is to adopt ordinances necessary to administer any public health matter not expressly preempted by state or federal laws. It is well established that the combustion of fossil fuels releases harmful chemicals, contributing to numerous health issues, including asthma, cancer, heart disease, and premature death. Spills or releases from CEI Hub tanks pose a threat not just to immediate health and safety, but in an ongoing way as noxious volatile fumes and smoke from uncontrolled burning of fuels remain in the air. Health costs from

toxin exposure to nearby residents and emergency response workers are estimated to range between \$121 million and \$249 million, encompassing both acute and chronic conditions.

G. Although federal and state laws and regulations exist to prevent, mitigate and respond to spills or releases of liquid fuel products, oils, or other hazardous materials, a number of potential factors may limit the amount of funds available, or unreasonably delay accessibility of funds leading to an inability to sufficiently respond to the level of damage and ongoing risk posed by a worst-case spill. These include the following:

- Federal Oil Pollution Act (OPA) and State “act of god “ provisions
- OPA and State statutory liability caps and self-insurance provisions
- Companies going bankrupt or simply disappearing
- Delays of reimbursement by the federal government
- Taxpayer exposure to cleanup and damage costs through the Oil Spill Liability Trust Fund and the potential overexposure of the fund due to a region-wide CSZ earthquake
- Company moral hazard in the case of insufficiently factoring in the cost of cleanup and damages.
- Delays due to protracted litigation or administrative challenge

H. Any limitation on or delay in access to funds will leave Multnomah County and its taxpayers bearing the costs of emergency response, damage, cleanup, and mitigation of ongoing harm resulting from the spillage or release of known toxic products in containers unable to fully contain them.

I. In light of the substantial risks to human health, the environment, and infrastructure posed by the CEI Hub, combined with the risk that funding and protections established by state and federal laws might not be available, might not be sufficient, or might be delayed in the setting of a worst-case spill or release, the Multnomah County Board of Commissioners unanimously passed its 2019 resolution “*Supporting Efforts to Require the Fossil Fuel Industry to Bear the Full Cost of Damages Caused by Transporting, Storing, or Using Fossil Fuels*”. This initiated a process of determining how best to ensure that operators of facilities upgraded their infrastructure to modern seismic standards and/or retained liability coverage to ensure the public could be made whole in case of a worst-case spill or release.

J. The first step in pursuing policy to address the Board’s goals as stated in their 2019 resolution was to quantify the scope and scale of risk and cost of responding to damage posed by the CEI Hub. Multnomah County’s Office of Sustainability and Office of Emergency Management commissioned ECO-Northwest to conduct a physical analysis of the tanks located in the CEI Hub, evaluate the contents of the tanks, and estimate the costs that would be associated with a worst-case spill or release of tank contents.

K. The analysis was completed in 2022 and the findings were compiled in a report entitled *Impacts of Fuel Releases from the CEI Hub Due to a Cascadia Subduction Zone Earthquake* (“Analysis”). The Analysis found that the 630+ tanks in the CEI Hub containing liquid fuels, oils, and other hazardous materials, had a combined total storage capacity of at least 350,600,000 gallons. The tanks were built on average 70 years ago and some were built over a hundred years ago, well before modern seismic standards had been established.

L. The Analysis estimated that a CSZ earthquake would result in total potential releases from the materials stored in tanks at the CEI Hub ranging from 94.6 million to 193.7 million gallons. Furthermore, oil released from the tanks into the river would spread downstream to the Columbia River, severely impact marine and terrestrial ecosystems, devastate commercial and subsistence fisheries, interrupting the flow of intrastate, interstate, and even international commerce.

M. The monetized costs from CSZ earthquake-induced spills were calculated to be approximately \$2.6 billion (2022 dollars), with the upper-cost estimate for a worst-case spill being \$2,791,187,575 and the lower-cost estimate being \$385,398,592. Based on the total storage capacity of the CEI Hub of 350,600,000 gallons, this translates to upper and lower per-barrel cost estimates of \$342 per barrel and \$46 per barrel, respectively. Based on evidence from prior spills, the Multnomah County report noted that total costs and damages would likely be many multiples of the monetized amounts.

N. The report commissioned by Multnomah County was used to (support) Oregon Senate Bill 1567 which established a seismic tank stability program requiring bulk oil or liquid fuel terminals to submit Seismic Vulnerability Assessments to the Oregon Department of Environmental Quality by June 2024. Upon DEQ approval of the Seismic Vulnerability Assessments regulated facilities will have 6 months to develop a Seismic Risk Mitigation Implementation Plan and must implement the plan within 10 years of approval by the DEQ. Even after fully implementing the mitigation plans there will be a residual risk of spill or release especially in the context of a CSZ earthquake.

O. Due to the unique confluence of risks leading to unprecedented levels of harm that will potentially not be covered in a worst-case spill at the CEI Hub due to “act of god” exclusions, liability limits, delays in having to implement mitigation plans, and the extensive delays associated with seeking reimbursement of federal funds and protracted litigation and administrative proceedings, Multnomah County seeks financial assurance that those responsible for tank containment bear the costs, rather than the public.

P. Therefore, this ordinance intends to establish requirements for owners of CEI Hub facilities that store oils or liquid fuel products or other hazardous material in Multnomah County, Oregon to demonstrate sufficient financial assurance to cover costs and damages associated with the known risk of a CSZ earthquake, as demonstrated by the Multnomah County report *Impacts of Fuel Releases from the CEI Hub Due to a Cascadia Subduction Zone Earthquake*, and prior state and local reports on seismic vulnerability and other sources of credible scientific information.

Q. The land that we now call Portland, Oregon, and Multnomah County, indeed this entire area of the confluence of the Columbia and Willamette rivers, is the traditional homeland and fishing and gathering range of tribes throughout the region. The governments that now occupy these lands have a government-to-government responsibility to honor and fulfill treaty obligations. Today there are nine tribal nations in Oregon representing diverse cultures and peoples, and other Tribes outside of Oregon who access the lands and waters of Multnomah County as their usual and accustomed places. While not every tribal nation has Federally recognized treaties, all tribal nations are owed the right to help shape the future of this community, particularly with respect to water, gathering of traditional foods, of natural areas, the protection of the environment, and other issues that are deemed important by those tribes. The Multnomah

County financial assurance policy is intended to support emergency response, costs of damage and cleanup, and mitigation of ongoing harm in tribal lands impacted by a worst-case spill or release at the CEI Hub.

Multnomah County Ordains as Follows:

Section 1. MCC 25.240 is added as follows:

MCC 25.240 DEFINITIONS

As used in MCC 25.240 to MCC 25.295, unless the context requires otherwise, the following terms and their derivations shall have the meanings provided below:

BARREL means 42 U.S. gallons at 60 degrees Fahrenheit.

CERTIFICATE OF FINANCIAL ASSURANCE means a document signed by the director certifying that owners of facilities have demonstrated proof of financial ability to pay for costs and damages resulting from, arising out of, or relating to a worst-case spill or release from facilities.

COSTS AND DAMAGES means the costs incurred by Multnomah County in responding to a spill or release from a facility, including but not limited to:

- (A) bodily injury
- (B) the containment, collection, removal, treatment, or disposal of oils, liquid fuel products, or hazardous materials; site restoration; investigations, monitoring, surveys, testing and other information gathering required by DEQ or another public entity;
- (C) remediation of lands or waters to return to baseline conditions;
- (D) loss of or damage to real or personal property, natural resources, or any other thing of value;
- (E) loss of financial assets including loss of income, net revenue, or the means of producing income or revenue, including loss of tax revenue; and
- (F) other losses or expenditure of County funds in responding to a spill or release.

DEQ means the Oregon Department of Environmental Quality.

DIRECTOR means the Multnomah County Office of Sustainability Director, or designee.

FACILITY means an industrial operation located in Multnomah County that is primarily engaged in the transport or bulk storage of oils, liquid fuel products, or hazardous materials and has one or more bulk above-ground storage tanks with a combined total storage capacity of two million gallons or more for oils, liquid fuel products, or hazardous materials within the property

line or within the collective properties shared by a single owner.

HAZARDOUS MATERIAL means any substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section 102(a) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

OILS OR LIQUID FUEL PRODUCTS means petroleum products or biological oils and blends of any kind, that are liquid at atmospheric temperature and pressure or liquified by reducing its temperature and increasing pressure including, but not limited to, petroleum, gasoline, reformulated gasoline, reclaimed oil, crude oil, asphalt, benzene, benzol, kerosene, fuel oil, diesel oil, liquified natural gas, propane, oil sludge, oil refuse, and oil mixed with wastes other than dredge spoil or any other volatile and inflammable liquid.

OPERATOR means any person or entity who conducts or has daily responsibility for on-site operation and maintenance of a facility. Operator does not include a public entity.

OWNER means any person or entity that owns or leases a facility. "Owner" does not include a public entity.

RESPONSIBLE PARTY means the owner and/or operator of a tank responsible for ensuring compliance with federal, state, and local laws, rules and regulations.

RISK MITIGATION IMPLEMENTATION PLAN means a written document outlining risk mitigation actions and steps to minimize the risk of damage to a facility, surrounding communities and the environment as required by the DEQ under Oregon's Fuel Seismic Stability Program as authorized by Oregon Senate Bill 1567.

SPILL OR RELEASE means the intentional or unintentional discharge, deposit, injection, dumping, spilling, emitting, releasing, leaking, or placing of any oils, liquid fuel products or hazardous material into the air or into or on any land or waters of the state located in Multnomah County, except as authorized by a state permit or federal law or while being used for its intended purpose.

TANK means any individual above-ground container with capacity greater than 2,000,000 gallons used to store oil, liquid fuel products and hazardous materials in a facility.

TANK CAPACITY means the capacity of an individual above-ground tank to hold or store oils, liquid fuel products, or other hazardous materials as measured in barrels and/or gallons.

TOTAL STORAGE CAPACITY is the total capacity of the facility to store or hold oils, liquid fuel products and hazardous material in above-ground tanks located at the facility measured in barrels or gallons.

WATERS OF THE STATE means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, and all other bodies of surface or underground waters, natural or artificial, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

WORST-CASE SPILL OR RELEASE means the largest possible spill or release from a

facility, based on the facility's total storage capacity of oils, or liquid fuel products, or hazardous material.

Section 2. MCC 25.250 is added as follows:

MCC 25.250 PURPOSE AND APPLICABILITY

(A) The purpose of MCC 25.240 to MCC 25.295 is to protect the public health and environment; respond to, prevent and mitigate ongoing harm; and ensure cleanup and remediation by requiring that owners of tanks housed in a facility demonstrate proof of sufficient financial resources to pay costs and damages from a worst-case spill or release from a facility.

(B) The issuance of a certificate of financial assurance in no way restricts or sets financial limitations on any duty, obligation, or liability of the owner, operator, or any other responsible party. Requiring proof of having sufficient resources on hand to pay costs and damages from a worst-case spill or release in no way restricts or limits any duty, obligation, or liability of owners or any other responsible entity.

(C) The financial assurance requirements in MCC 25.240 to MCC 25.295 are in addition to, and not in lieu of, any other legal requirements.

Section 3. MCC 25.260 is added as follows:

MCC 25.260 DEMONSTRATION OF FINANCIAL ASSURANCE REQUIRED

(A) The owner of a facility must obtain a certificate of financial assurance from the director demonstrating the ability to pay for costs and damages resulting from a worst-case spill or release in an amount calculated in MCC 25.270. If the owner of a facility is not also the operator of that facility, only the owner is required to obtain a certificate of financial assurance.

(B) The owner of a facility may demonstrate financial assurance for costs and damages through any one or more of the following mechanisms:

- (1) Trust fund;
- (2) Insurance policy;
- (3) Bond with a standby trust;
- (4) Letter of credit with a standby trust; or
- (5) Any other mechanism approved in writing by the director.

(C) The director will establish a process for demonstrating financial assurance along with the contents and language for certificates of financial assurance as outlined in MCC 25.280 by rule.

Section 4. MCC 25.270 is added as follows:

MCC 25.270 AMOUNT OF FINANCIAL ASSURANCE REQUIRED

(A) The owner of a facility must determine the amount of financial assurance required by calculating the costs and damages that could result from, arise out of, or relate to a worst-case spill or release from the facility using the applicable formula:

(1) For facilities that have not submitted the final-post implementation report or series of final reports to DEQ for their risk mitigation implementation plan, multiply the total storage capacity by \$342.00 per barrel.

(2) For facilities that have submitted the final-post implementation report or series of final reports to DEQ for their risk mitigation implementation plan, multiply the total storage capacity by \$46 per barrel.

(B) If the risk mitigation implementation plan is invalidated for any reason, then the amount of financial assurance will be calculated using MCC 25.270(A)(1).

(C) The dollar amounts in MCC 25.270(A)(1) and (2) shall be adjusted on January 1 of each odd-numbered year as required by rule.

Section 5. MCC 25.280 is added as follows:

MCC 25.280 CERTIFICATE OF FINANCIAL ASSURANCE

(A) The owner of a facility must submit to the director an application for a certificate of financial assurance that:

(1) Identifies the facility's total storage capacity;

(2) Identifies the amount of financial assurance required by MCC 25.270. If the formula identified in MCC 25.270(A)(2) is applied, owners must attach the applicable final-post implementation report or series of final reports.

(3) Identifies the financial assurance mechanism or mechanisms;

(4) Provides proof that the financial assurance mechanism or mechanisms provide coverage for costs and damages in the amount required based on the calculations conducted according to MCC 25.270.

(5) Provides any other information specified by rule.

(B) Applications meeting the requirements of this section will receive a certificate of financial assurance. If an application is denied, the owner may appeal using the procedures in MCC 25.290.

(C) A certificate of financial assurance will include an expiration date that is three years from the date of issuance. At least 90 days before the expiration date, the owner of a facility must submit an application to renew its certificate of financial assurance containing all of the information required in MCC 25.280(A).

(D) If any of the information required to be submitted under MCC 25.280(A) changes

before the expiration date on a certificate of financial assurance, an owner must file a notice of the change with the director within 30 days of the date of the change. The director will process the notice in the same manner as applications are processed under MCC 25.280(B), including issuing a new certificate of financial assurance with the updated information.

Section 6. MCC 25.290 is added as follows:

MCC 25.290 ENFORCEMENT, PENALTIES, AND APPEAL

(A) A violation occurs when an owner fails to comply with MCC 25.240 through MCC 25.290. Each day a violation occurs is a separate violation.

(B) The director may issue civil penalties of up to \$1,000 per violation.

(C) An investigation may be initiated when the director has reason to believe a violation occurred.

(D) If it is determined that it is more likely than not that a violation occurred, an early intervention warning will be issued to the owner or operator describing:

- (1) The code provision violated;
- (2) The reasoning and evidence supporting the violation; and
- (3) Available resources to assist with compliance.

(F) The owner has 5 business days from the date of the early intervention warning to provide a written response that includes a plan to cure the alleged deficiency and any supporting materials; and

(G) After the deadline to provide information has passed, the director will examine all information provided. If it is determined that it is more likely than not that a violation has occurred, a written notice of civil infraction may be issued to the owner that describes:

- (1) The code provision violated, including the reasoning and evidence to support the finding of violation;
- (2) The amount of civil penalties imposed, if any;
- (3) Available resources to assist with compliance; and
- (4) Appeal rights and procedure for appeal.

(H) An owner may appeal a denial of an application for a certificate of financial assurance or a notice of civil infraction within 30 days of the date of issuance. The appeal must be filed in writing with the director along with the hearing fee in an amount set by rule.

- (1) The appeal must include a copy of the denial of application or notice of violation, and may include new information or evidence that was not presented to the director.
- (2) A hearings officer will review the denial of application or notice of violation, the information reviewed by the director, and the appeal.
- (3) The hearings officer will issue a written decision that may affirm or reverse the denial of application, or affirm, deny or modify the notice of civil infraction. The decision is final upon issuance.

Section 7. MCC 25.295 is added as follows:

MCC 25.295 ADMINISTRATIVE RULES

(A) The director may promulgate rules to implement MCC 25.240 through MCC 25.290 as necessary to implement the program.

Section 8. This ordinance shall take effect on July 1, 2026.

FIRST READING: (type in meeting date)

SECOND READING AND ADOPTION: (type in meeting date)

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Jessica Vega Pederson, Chair

REVIEWED:
JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By: _____
(Name & Title of Approving Attorney)

SUBMITTED BY: Sharon Meieran, Commissioner District 1

DRAFT