

4849-2758-6486.v1

1 foreign markets from the Levin-Richmond Terminal (the “Terminal”) located in Richmond,  
2 California. Phillips 66 produces petcoke at its petroleum refinery in Rodeo, California, and  
3 exports it through the Terminal to overseas customers. Despite decades of petcoke  
4 exportation through the Terminal, Defendants enacted an ordinance on February 4, 2020,  
5 (the “Ordinance”) that completely prohibits the transloading of petcoke from trucks to ships  
6 by banning any storage and handling of petcoke at the Terminal. The Terminal is the sole  
7 marine terminal available in Richmond and the immediate area for transshipment of  
8 petcoke to interstate and overseas customers.

9       2. Phillips 66 has produced petcoke at its Rodeo Refinery and shipped petcoke  
10 to overseas customers from the Terminal for more than twenty years. Petcoke is a valuable  
11 product of the petroleum refining process and a critical component in numerous industrial  
12 applications, both domestically and abroad. Petcoke shipped through the Terminal is  
13 exported for use in the manufacture of a wide variety of products, including medical  
14 devices, aluminum, and titanium dioxide, which is used as a pigment for paint, plastics,  
15 sunscreen, cosmetics, and food coloring. As part of a political agenda to ban coal exports  
16 through the Terminal (which began approximately six years ago to meet increasing  
17 worldwide demand for cleaner-burning coal mined in the United States), Defendants  
18 enacted the Ordinance to terminate all coal transshipments, and included within it a ban on  
19 storage and handling of petcoke at the Terminal as well.

20       3. For the reasons alleged herein, the Ordinance imposes an unreasonable  
21 burden on interstate and foreign commerce that is unjustified and excessive in relation to  
22 putative local benefits. Among other things, Defendants banned petcoke “storage” and  
23 “handling” in Richmond without any credible scientific evidence (i) that the Terminal or  
24 petcoke are a source of harmful fugitive dust emissions in Richmond or (ii) that petcoke  
25 presents any public health hazard. To the contrary, overwhelming evidence before the City  
26 Council demonstrated that petcoke handling and storage at the Terminal are not a source of  
27 fugitive dust emissions and do not present any health risks. While the Ordinance ostensibly  
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affords the Terminal a 3-year phase-out period to cease transshipment operations, in effect, the Ordinance poses an immediate and direct threat to continued operation for transshipment of petcoke. Phillips 66 therefore seeks declaratory and injunctive relief holding that the Ordinance is invalid and unenforceable under the Commerce Clause of the U.S. Constitution, Article I, § 8, cl. 3 (“Commerce Clause”).

4. Respondents’ action also violated the federal constitutional prohibition against laws impairing the obligation of contracts. U.S. Const., Art. 1, § 10 (“Impairments Clause”). Among other things, the Ordinance substantially impairs Phillips 66’s contracts for petcoke transloading at the Terminal, as well as its contracts with purchasers of petcoke, without sufficient justification or consideration of less restrictive means to achieve the stated purposes of the Ordinance.

#### PARTIES

5. Plaintiff Phillips 66 is a Delaware corporation and owns and operates the Rodeo Refinery. Petcoke produced at the Refinery is delivered by truck to the Terminal, located at 402 Wright Avenue in Richmond, for transloading to ships for export to Phillips 66 customers.

6. Defendant City of Richmond is a charter city in Contra Costa County organized under the constitution and laws of the State of California. The City, acting by and through the City Council, is the municipal entity responsible for the Ordinance adopted on February 4, 2020, amending the Richmond Municipal Code (“RMC”) by adding Article 15.04.615 (Prohibition of the Storage and Handling of Coal and Petcoke) and amending § 15.04.104.010 (Warehousing, Storage, and Distribution Definition). Pursuant to the City Charter, the City may be sued “in all courts and places, and in all actions and proceedings whatsoever.” Richmond Charter art. II, § 1(3).

7. Defendant City Council is the duly-elected legislative and decision-making body within the City responsible for approving the Ordinance on behalf of the City.

**JURISDICTION AND VENUE**

8. This Court has subject-matter jurisdiction over the claims asserted in this action pursuant to 28 U.S.C. § 1331 (federal question) and 42 U.S.C. § 1983, as the claims herein seek to interpret and apply the Commerce Clause and the Impairments Clause of the United States Constitution.

9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)(1) and 1391(b)(2) because Defendants are located within the District, a substantial part of the events giving rise to the Claims occurred in the District, and a substantial part of the property affected by the Ordinance is located in the District.

10. The relief requested is authorized pursuant to 28 U.S.C. §§ 2201 and 2202 (declaratory judgment), 28 U.S.C. § 1651(a) (injunctive relief), and 42 U.S.C. § 1983 (declaratory and injunctive relief available for Commerce Clause violations).

**INTRADISTRICT ASSIGNMENT**

11. Pursuant to Civil L.R. 3-2(c) and (d) and Civil L.R. 3-5(b), there is a basis for assigning this action to the San Francisco Division or the Oakland Division, as the action arose in Contra Costa County.

**FACTUAL BACKGROUND**

**A. Phillips 66 Production and Shipment of Petcoke.**

12. Phillips 66 transports petcoke from its Rodeo Refinery by means of covered trucks that travel approximately 10 miles to the Terminal in Richmond. The covers are not removed during transport or unloading, and the product is transferred at the Terminal by removing pins to release the bottom of the truck bed, thereby preventing spilling or dispersal. In addition to utilizing covered trucks, Phillips 66 personnel apply dust suppressant to the petcoke to minimize or eliminate release of dust during transfer. At the Terminal, the petcoke is transferred to ocean-going freighters for shipment to customers in

1 Europe, Australia, Asia, and other locations, with some temporary, indoor storage and  
2 handling of petcoke incidental to transfer of the product from trucks to marine vessels.

3 13. The Terminal is the only petcoke bulk handling facility and transfer point for  
4 marine shipment in Richmond. The Ordinance would deny Phillips 66 port access in that  
5 area to transload and export petcoke to foreign markets. Further, there are no marine  
6 facilities other than the Terminal with suitable equipment, such as deep-water berths,  
7 conveyors, ship loaders and temporary storage, in the immediate area from which Phillips  
8 66 can ship petcoke. As Phillips 66 advised Defendants, it would be forced to try to  
9 transport petcoke by truck or rail from Rodeo to more distant marine terminal locations,  
10 assuming locations with suitable capacity and equipment could be found.

11 **B. Bay Area Air Quality Management District Air Quality Monitoring.**

12 14. In 2015, the City Council adopted a resolution requesting that the Bay Area  
13 Air Quality Management District (“BAAQMD”) “regulate the storage and handling of coal  
14 and petroleum coke.” *See* City Council Agenda Item #G-10 (February 4, 2020). Phillips  
15 66 is informed and believes that BAAQMD nominated the City for a community  
16 monitoring project under the statewide Community Air Protection program established by  
17 Assembly Bill 617 (C. Garcia, Chapter 136, Stat. 2017) (“AB 617”). Pursuant to AB 617,  
18 the California Air Resources Control Board, BAAQMD, and community representatives are  
19 partnering to study air quality to determine areas of concern and sources of air pollution in  
20 the City, including potential pollutants in and around the Terminal, and to prepare an  
21 emission reduction plan based on that information.

22 15. In or about July 2018, the City submitted a proposal to BAAQMD for  
23 review of a parallel coal dust monitoring study around the Terminal. BAAQMD, through  
24 its Executive Officer/Air Pollution Control Officer, submitted a letter to Defendants, dated  
25 July 5, 2018, stating that “the Air District believes that the upcoming community  
26 monitoring plan for Richmond is the appropriate way to address concerns about coal dust  
27 impacts,” rather than a separate study. City Council Agenda Item #I-2 (December 3, 2019).

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1           16.     BAAQMD also explained that an emission reduction plan for the City would  
2 include regulatory, incentive, and other programs based on scientific data:

3                    “Any regulations that are developed as part of the community  
4 emission reduction program *will need a solid technical*  
5 *foundation* as the Air District is required to demonstrate that  
6 all regulations are reasonable, necessary and within our  
7 statutory authority.” BAAQMD Letter p. 2 (emphasis  
8 added).

9           17.     BAAQMD also advised that there are many types and sources of particulate  
10 matter (“PM”) in the City, including from other areas in the region. Elemental carbon  
11 (“EC”) is one category of particulate matter that includes diesel and other sources, in  
12 addition to coal dust:

13                   “Since coal dust is a subset of [elemental carbon] EC, which  
14 includes other species such as diesel PM, further speciation  
15 techniques would need to be applied to differentiate coal dust  
16 from EC. Simply determining if EC is present would not  
17 provide enough information to determine if coal dust is  
18 present. In addition, in order to determine if coal dust is an  
19 historical artifact or being deposited by current sources,  
20 measurements would have to be taken for a long period of  
21 time so that meteorological and other impacts can be ‘teased  
22 out.’ Simply determining if components of coal dust are  
23 present will not provide information on when the dust may  
24 have been deposited. As a result, *any study to determine*  
25 *whether coal dust is present and increased due to current*  
26 *activities, would require a long-term study employing*  
27 *techniques not usually used to speciate typical PM . . . a*  
28 *study . . . would need to evaluate physical and chemical*  
*characteristics of the airborne particulate matter—likely in*  
*multiple ways . . . it’s not enough to simply determine if there*  
*is coal dust in the area.”* BAAQMD Letter pp. 2-3 (emphasis  
added).

18.     According to BAAQMD, the parameters for a valid long-term study would  
need to include specific use information and a “typical PM signature of regional urban  
background” to design “measurements of physical and chemical characteristics of PM” for  
at least one year that, along with sampling locations, frequency, and duration, “could  
provide data to attribute the observed PM concentrations to various sources.” BAAQMD  
Letter p. 3. The same parameters also would apply to a study concerning petcoke.  
BAAQMD made clear that



1        “any monitoring plan that does not provide this level of effort would not  
 2        provide the answer to the question of ‘are current activities at the Port of  
 3        Richmond leading to an increase in health impacts to local residents.’”  
*Id.* p. 4 (emphasis added.)

4        19. As alleged herein, in enacting the Ordinance, Defendants ignored  
 5        BAAQMD’s advice and failed to conduct any technically-sound long-term study that  
 6        employed appropriate scientific techniques to identify fugitive petcoke or coal dust near the  
 7        Terminal or any risk associated therewith.

8        **C. Planning Commission Unanimous Vote to Obtain More Evidence.**

9        20. Defendants ignored not only the BAAQMD guidance, but also the findings  
 10       of their own Planning Commission that a valid scientific study was needed to support any  
 11       such ordinance, and continued pursuing the Ordinance nonetheless as part of a political  
 12       agenda.

13       21. On May 19, 2015, the City Council had adopted Resolution No. 48-15,  
 14       opposing the mining, export and burning of coal in general, and the “*transportation*” of coal  
 15       and petcoke “along California waterways,” through “densely populated areas,” and through  
 16       the City on existing rail lines and roadways. (Emphasis added.) The Resolution approved a  
 17       City policy to prohibit the use of City-owned property for coal or petcoke “storage or  
 18       export” and to “alert” other cities “along the transportation route” to support their  
 19       opposition to coal and petcoke “transport.” *Id.* (emphasis added).

20       22. A December 18, 2018 Agenda Request requested that the Planning  
 21       Commission be directed to study an ordinance affecting private property, and asserted that  
 22       “climate change” and the need to protect “the health of our planet” were the basis for  
 23       prohibiting transshipment of coal and petcoke at the Terminal, in addition to purported local  
 24       health risks from fugitive coal and petcoke dust.

25       23. In April 2019, the City Council then directed City staff to prepare an  
 26       ordinance to amend the Richmond Zoning Ordinance to “*prohibit new land uses and phase*  
 27       *out existing land uses* related to the storage and handling of coal and petroleum coke; and to  
 28       modify the zoning ordinance to *remove the storage and handling of coal and petroleum*

1 *coke from the list of uses conditionally allowed in certain industrial zones.”* City Council  
2 Agenda Item #G-10 (February 4, 2020) (emphasis added). Thereafter, City staff prepared a  
3 modified ordinance for the Planning Commission’s consideration that addressed the items  
4 as identified by the City Council. *Id.*

5         24. On July 18, 2019, the Richmond Planning Commission held a public hearing  
6 to consider a recommendation to the City Council on the proposed municipal code  
7 amendments at issue herein. No scientific long-term study had been prepared as  
8 recommended by BAAQMD. Phillips 66 and others submitted written comments and/or  
9 public testimony to the Planning Commission opposing the proposed Ordinance on  
10 numerous grounds. During the public comment period, many speakers raised concerns over  
11 the loss of union jobs at the Terminal should the Ordinance be adopted, as well as the lack  
12 of scientific evidence of adverse air quality impacts. Several speakers commented that the  
13 City should wait until AB 617 air monitoring is completed and gather scientific data before  
14 taking “drastic action.”

15         25. The owners and operator of the Terminal (Levin Enterprises, Inc., Levin  
16 Richmond Terminal Corporation (“LRTC”) and Richmond Pacific Railroad Corporation  
17 (collectively, “Levin”)), testified to the Planning Commission that the Ordinance would  
18 effectively put the Terminal, which is designed for bulk exports, out of business, and that  
19 there were no other viable businesses to replace current activities. Levin also submitted  
20 testimony that petcoke is stored in an enclosed building with controls or is transloaded from  
21 trucks directly to ships; and only a limited amount of petcoke is temporarily stored on the  
22 ground with proper safeguards awaiting loading into a marine vessel. Levin also testified  
23 that controls used at the Terminal include wind buffers and high-pressure watering. Phillips  
24 66 is informed and believes that additional measures are also in place at the Terminal to  
25 address potential dust emissions including covered conveyors, water misters, and  
26 regenerative sweeping equipment.



26. Levin also submitted a scientific study prepared by Sonoma Technology, Inc. (“STI”), which demonstrated that existing data did not support a conclusion that the Terminal “is a source of” fugitive petcoke emissions that “pose health risks or other impacts” in Richmond. *See* Initial STI Assessment (July 12, 2019) p. 23.

27. Following nearly four hours of public testimony, Commissioner Tucker stated the Planning Commission had been tasked with making a decision based on insufficient information, including the lack of information regarding economic impact to the City and data concerning air quality impacts. The Planning Commission voted unanimously against recommending adoption of the Ordinance, and instead adopted Resolution 19-29 (July 18, 2019) recommending that the City Council defer consideration of the proposed ordinance until completion of an air monitoring study to determine if the Terminal is a source of fugitive coal and petcoke dust that poses health risks, and until an economic impact report is prepared concerning the effect of the ordinance on jobs and the community. Resolution 19-29 stated in part:

“[T]he Richmond Planning Commission does *not* find that the storage and handling of coal and petroleum coke is an undesirable land use; and . . . recommends that the City Council *not* adopt an ordinance . . . prohibiting the storage and handling of coal and petroleum coke, . . . *cannot find* that the proposed ordinance is necessary for public health, safety and welfare, and expressed its position that *additional study is needed* to better understand the air quality impacts of operations at existing sites . . . [and] the potential economic impacts to the City of Richmond . . .” (Emphasis added.)

#### **D. City Council Adoption of the Ordinance.**

28. On December 3, 2019, the City Council held a public hearing to consider the Ordinance. Prior to that hearing, and in line with the Planning Commission’s recommendations, Levin submitted an actual air monitoring study and economic impact analysis to the City. STI completed a preliminary screening study of air quality monitoring data (correlated to wind speed and direction) at the Terminal from April 19, 2019 through

1 July 31, 2019, finding that the data did not support a conclusion that the Terminal was a  
2 source of harmful fugitive dust emissions. STI Supplemental Report pp. 2, 11-16.  
3 Levin also submitted information that adoption of the Ordinance would “put LRTC out of  
4 business” and result in the loss of 62 jobs, including jobs held by Richmond residents and  
5 48 members of Operating Engineers Union Local 3.

6 29. On November 19, 2019, Phillips 66 submitted a letter to the City Council in  
7 opposition to the Ordinance, asserting that, in light of the STI studies, the BAAQMD  
8 correspondence and other information, there was no scientific basis for concluding that  
9 fugitive dust from the storage and handling of petcoke at the Terminal posed any health  
10 risks or environmental impacts.

11 30. On January 14, 2020, the City Council conducted a first reading and voted to  
12 approve the Ordinance. On February 4, 2020, the City Council conducted a second reading  
13 and adopted the Ordinance by Consent Calendar approval. Under applicable State law, the  
14 Ordinance takes effect 30 days following adoption.

15 31. In adopting the Ordinance, Defendants ignored the advice of BAAQMD and  
16 their own Planning Commission to obtain a scientifically-valid, long-term study of (alleged)  
17 fugitive emissions associated with coal or petcoke handled at the Terminal; ignored the  
18 scientific information provided by STI; and passed the Ordinance without a scientific basis  
19 or credible evidence of putative local benefits. There was no credible evidence before the  
20 City Council that fugitive dust from the temporary storage and handling of petcoke at the  
21 Terminal poses health risks or environmental impacts.

22 32. Instead, the Ordinance reflects Defendants’ imposition of extraterritorial  
23 political objections to the commodities of coal and petcoke. The initial December 18, 2018  
24 Agenda Report to the City Council, referenced above, stated that an objective of the  
25 Ordinance would be to reduce coal (and petcoke) burning in “the city, state, country, and  
26 world.” However, petcoke is not burned in the City or the State, and instead is exported  
27 primarily for use in the manufacture of many products as alleged above. Defendants have  
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1 no jurisdiction to regulate interstate or foreign commerce in petcoke under the guise of an  
 2 unlawful local ordinance.

3 33. Defendants also attempted to downplay the consequences of their actions.  
 4 The Agenda Report for the December 3, 2019 hearing stated that the Ordinance “does not  
 5 regulate the transportation of” petcoke “through” the City or “to or from” a facility where  
 6 petcoke is stored or handled. Agenda Report p. 3. The Ordinance does, however, directly  
 7 obstruct the transportation of petcoke. It prohibits intermodal transloading operations and  
 8 activities (receipt, storage, handling, interchange, loading or unloading, or “transfer in  
 9 transit” of goods) that are a necessary component of transportation, particularly for overseas  
 10 export, at the only available marine terminal in the immediate area. *See Grosso v. Surface*  
 11 *Transp. Bd.* (1st Cir. 2015) 804 F.3d 110, 114, 118 (citation omitted); *California Tow Truck*  
 12 *Assn. v. City and County of San Francisco* (9th Cir. 2015) 797 F.3d 733, 753, n. 15  
 13 (transportation means services related to movement of property, including transfer in  
 14 transit, storage, and handling) (citation omitted).

15 **E. The Ordinance and Findings.**

16 34. The Ordinance contains recitals that “storing, loading, unloading,  
 17 stockpiling, and/or otherwise handling coal and/or petroleum coke, temporarily or  
 18 permanently, in the City of Richmond, is associated with and/or causes health and safety  
 19 impacts in humans,” including due to “fugitive coal dust,” and can negatively impact the  
 20 environment. Ordinance pp. 1-2. The recitals include conclusory statements that “health  
 21 and environmental problems” result from petcoke “storage and handling” (*Id.* p. 2) and that  
 22 the Ordinance is “necessary” for “public health safety” in order to “reduce particulate  
 23 matter emissions and toxic exposure” from petcoke “storage” and reduce pollution burdens  
 24 “near certain industrial areas” (*Id.* p. 5).

25 35. However, the record before Respondents demonstrated that such findings  
 26 lacked scientific evidence or a basis in fact, and there was no credible evidence before the  
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1 City Council of fugitive petcoke emissions at the Terminal or any “associated” health and  
2 safety or environmental impacts.

3 36. RMC Article 15.04.615, as passed, prohibits and “bans the establishment  
4 and/or expansion of” “storage and handling” of petcoke in the City (with certain exceptions  
5 for non-commercial uses) and “phases out” existing allowed uses, meaning the Terminal.  
6 §§ 15.04.615.010(B), 15.04.615.030, 15.04.104.010 (removing petcoke from definition of  
7 chemical, mineral, and explosives storage). “Storage and handling” are broadly defined to  
8 include even covered or underground piles, or storage within containers. *See*  
9 § 15.04.615.020(F). The City also retains “authority to *immediately* terminate, discontinue,  
10 or abate any land uses found to be a nuisance.” § 15.04.615.050(K) (emphasis added).

11 37. While the stated intent of Article 15.04.615 is to “protect and promote”  
12 health, safety and welfare by “reducing the release of pollutants” and reducing “adverse  
13 impacts to property values, aesthetics, and economic interests” as a result of petcoke and  
14 coal storage and handling (Section 15.04.615.010(A)), none of those alleged adverse  
15 impacts were supported by evidence as heretofore alleged; nor did Respondents at any time  
16 consider less restrictive means to accomplish their purported objectives, even assuming  
17 such evidence had been provided.

#### 18 **F. Limitations on City Ordinances and Regulations.**

19 38. As a charter city, the City “may make and enforce all ordinances and  
20 regulations in respect to municipal affairs,” subject to limits imposed by the terms of its  
21 charter (Cal. Const. art. XI, § 5(a)), the Federal and State Constitutions, preempting federal  
22 and state legislation, and laws which the Legislature requires charter cities to obey. *Id.*;  
23 U.S. Const., art. VI, § 2; City Charter art. IX, § 10; Gov. Code § 65700. In respect to  
24 matters of regional or statewide concern the City is subject to general laws. Cal. Const. art.  
25 XI, § 5(a).

26 39. The City Charter requires that Defendants exercise their police powers to  
27 make “necessary” police and sanitary regulations. City Charter art. II, § 1(6). Under RMC  
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1 Section 15.04.814.050, a zoning amendment must be “necessary” for public health, safety,  
2 and general welfare or of benefit to the public.

### 3 CLAIMS FOR RELIEF

#### 4 FIRST CLAIM

##### 5 **(Violation of the Commerce Clause)**

6 40. Phillips 66 realleges and reincorporates by reference the allegations  
7 contained in paragraphs 1-39, inclusive.

8 41. The Constitution, through the Foreign Commerce Clause, grants Congress  
9 authority to “regulate Commerce with foreign Nations” (Art. I, § 8, cl. 3) and limits the  
10 power of States or municipalities to regulate such commerce under the so-called dormant  
11 Foreign Commerce Clause (*see, e.g., Japan Line, Ltd. v. County of Los Angeles*, 441 U.S.  
12 434, 449-454, 99 S.Ct. 1813, 60 L.Ed.2d 336 (1979)).

13 42. The Commerce Clause also authorizes Congress to “regulate” commerce  
14 “among the several States” (Art. I, § 8, cl. 3) and denies States or municipalities the power  
15 “unjustifiably to discriminate against or burden the interstate flow of articles of commerce.”  
16 *Or. Waste Sys., Inc. v. Dep’t of Env’tl. Quality*, 511 U.S. 93, 98, 114 S.Ct. 1345, 128  
17 L.Ed.2d 13 (1994). Congress regulates the channels, instrumentalities, and activities that  
18 substantially affect interstate commerce. *United States v. Lopez*, 514 U.S. 549, 558-559,  
19 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995).

20 43. Defendants’ decision to deny Phillips 66 access to the Terminal to transship  
21 and export petcoke impermissibly infringes on the Federal Government’s exclusive role to  
22 regulate interstate and foreign commerce. A California municipality “may not exercise its  
23 governmental functions beyond its . . . boundaries” or legislate the conduct of business  
24 outside its territorial limits. *S.D. Myers, Inc. v. City & County of San Francisco*, 253 F.3d  
25 461, 473 (9th Cir. 2001) (quoting *City of Oakland v. Brock*, 8 Cal.2d 639, 67 P.2d 344, 345  
26 (1937)) (emphasis omitted).

1           44. For the reasons alleged herein, the Ordinance significantly impairs the  
 2 inherently national interest in an efficient and uniform system of transportation of  
 3 commodities in interstate and foreign commerce. The Ordinance effectively prohibits all  
 4 shipments of petcoke to and through the Terminal. However, the loading, unloading,  
 5 transloading, transferring, storage and/or other handling of coal and petcoke are necessary  
 6 and inextricable parts of a uniform system of transportation and export, particularly where  
 7 the primary function of the Terminal is truck-to-ship transfer of bulk material for  
 8 international export. Thus, the Ordinance impermissibly directly regulates and burdens the  
 9 interstate and foreign components of commerce by prohibiting the flow of interstate goods  
 10 and the transportation and export of petcoke and coal.

11           45. If numerous municipalities, including cities with waterway and marine  
 12 access, regionwide or nationwide continue to adopt ordinances like Richmond's, the  
 13 national and international market for coal and petcoke will be stifled.

14           46. The Ordinance also imposes significant burdens on foreign and interstate  
 15 commerce that clearly outweigh and are "clearly excessive" in relation to the "putative local  
 16 benefits." *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142, 90 S.Ct. 844, 25 L.Ed.2d 174  
 17 (1970). While Defendants asserted the purpose in adopting the Ordinance was to "protect  
 18 the public" from the alleged "hazards of fugitive dust emissions from coal and petroleum  
 19 coke" and "the health hazards of coal and petroleum coke storage and handling,"  
 20 Defendants failed to undertake any scientifically-valid long-term study and the record  
 21 before them lacked any credible evidence of fugitive petcoke dust emissions in the City,  
 22 and no evidence of any health hazard posed by petcoke "storage and handling," including  
 23 transloading or temporary storage in the City. The Ordinance's excessive burden on  
 24 interstate and foreign commerce is unnecessary for the protection of the interests of the  
 25 citizens of the City and constituted an unreasonable exercise of the City's police power.

26           47. Even assuming there were evidence of fugitive petcoke or coal dust  
 27 emissions posing any potential health risk, Defendants adopted overly restrictive means,  
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precluding even covered, underground, or container storage of petcoke, or other less restrictive measures that could control fugitive dust emissions, opting instead for an outright ban on all such activities which have been conducted for decades with no evidence of public risk.

48. Accordingly, Phillips 66's interests will be materially and irreparably harmed if the Ordinance goes into effect and is implemented by Defendants. Phillips 66 therefore seeks a declaration in this Court that the Ordinance is in violation of the Commerce Clause and should be set aside and enjoined on that basis.

## SECOND CAUSE OF ACTION

### (Unconstitutional Impairment of Contract,

### U.S. Const., Art. 1, § 10)

49. Petitioner incorporates herein by reference the allegations contained in paragraphs 1-48, inclusive.

50. For the reasons alleged, the Ordinance also violates the Impairments Clause of the United States Constitution, Art. 1, § 10, which prohibits local laws or ordinances impairing the obligation of contracts.

51. Phillips 66 has in place a long-standing contract with the Richmond-Levin Terminal for transloading, including storage and handling, of petcoke shipped in interstate and foreign commerce, as well as numerous contracts with the purchasers of petcoke. The Ordinance operates as a substantial and unjustified impairment of the obligations of those contractual relationships, in prohibiting the storage and handling of petcoke in a manner unnecessary to protect public health.

52. Further, the Ordinance does not affect the rights and responsibilities of the contracting parties based upon reasonable conditions. While pursuing a broad political agenda relating to climate change, Defendants failed even to consider less restrictive means to achieve the (purported) public health and safety purposes of the Ordinance. Instead, subject to the phase-out period, the Ordinance operates as an arbitrary and absolute ban on

temporary or permanent petcoke storage and handling at the Terminal (whether underground, in containers, or otherwise enclosed), and without any consideration of potential mitigation of such claimed impacts, much less any credible scientific basis for the claimed public health impacts asserted in the Ordinance in the first instance. *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400 (1983); *Ross v. City of Berkeley*, 655 F. Supp. 820 (N.D. Cal. 1987).

53. Accordingly, Phillips 66's interests will be materially and irreparably harmed if the Ordinance goes into effect and is implemented by Defendants, thereby precluding shipment and export of petcoke through the Terminal. Phillips 66 therefore seeks a declaration in this Court that the Ordinance is in violation of the Impairments Clause and should be set aside and enjoined on that basis.

#### **PRAYER FOR RELIEF**

WHEREFORE, Phillips 66 respectfully prays that this Court:

A. Issue a declaratory judgment, pursuant to 28 U.S.C. § 2201, 42 U.S.C. § 1983, and/or Rule 57 of the Federal Rules of Civil Procedure, that the Ordinance violates the Commerce Clause and/or the Impairments Clause of the United States Constitution;

B. Issue a permanent injunction, pursuant to 28 U.S.C. § 1651, 42 U.S.C. § 1983, and/or Rule 65 of the Federal Rules of Civil Procedure, enjoining Defendants from applying the Ordinance to the Terminal and/or the storage or handling of petcoke;

C. Award costs and reasonable attorneys' fees to Phillips 66; and

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D. Grant such other relief as the Court deems just and proper.

Dated: March 6, 2020.

Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP  
RONALD E. VAN BUSKIRK  
MARGARET ROSEGAY  
Four Embarcadero Center, 22nd Floor  
Post Office Box 2824  
San Francisco, CA 94126-2824

By



Ronald E. Van Buskirk  
Attorneys for Plaintiff,  
PHILLIPS 66 COMPANY