

Rebel cities

Municipal resistance is rising across the country as local communities go head to head with the fossil fuel industry to preserve their environmental interests

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Two winters ago, the city of Portland made history.

After years of work on climate resilience and efforts to lower the city's carbon footprint, city officials took stock of the regional situation with the fossil fuel industry and unanimously passed a resolution to block the expansion of fossil fuel infrastructure – both within the city of Portland and in adjacent waters. The policy went into effect after another unanimous vote this past December, which finalized changes to city building codes.

The effort has been hailed by climate activists across the country, and sets a new precedent for how cities can lead against climate change. The policy also had the personal support of 350.org's Bill McKibben, who helped popularize the scientific consensus 5 years ago that 80 percent of existing fossil fuel reserves need to stay in the ground to prevent irreversible climate change. In October, McKibben joined former mayor Charlie Hales in an Oregonian opinion, writing "Portland is once again out in front, positioned to do what climate-change experts say is necessary to hold off catastrophic climate disruption."

By adopting the policy, Portland became the first city in the country to pursue direct municipal action against the fossil fuel industry. But as of January that policy is being challenged at the Land Use Board of Appeals (LUBA), where the fossil fuel industry hopes to declare the policy illegal.

This past July, Vancouver, Wash., took a piece of Portland's policy and banned the storage and handling of crude oil using city zoning law. Vancouver City Attorney E. Bronson Potter explains that the policy will not directly affect the massive Tesoro-Savage oil terminal, as state law in Washington pre-empts local law on projects of such size. But the law will prevent the company from building an adjacent refinery,

and before permitting the terminal, Washington state will have to consider the fact that the project is no longer consistent with city zoning laws. Potter said there have been no legal complaints against the city's new policy, and believes it stands on solid ground if challenges arise. "I'm confident that our ban on crude oil storage and handling facilities is enforceable," Potter said.

"I think it's pretty well established that cities through their zoning authority, do have the authority to allow or prohibit various types of uses," he said. "Can you single out certain types of commodities and say you're not going to allow those within your jurisdiction? I think if you're treating in-state and out-of-state handlers of those commodities equally you can."

A few days before Vancouver's action, the city of Aberdeen, Wash., voted to ban the storage and handling of crude oil within the city. And on March 21, Whatcom County, near the Canadian border, renewed a 6-month moratorium on unrefined fossil fuels through Cherry Point as plans develop to re-route the controversial Kinder Morgan pipeline around the city of Burnaby in British Columbia and through Cherry Point, Wash.

Back in Portland, the fossil fuel appeal is being pushed by three groups: the Portland Business Alliance, the Columbia Pacific Building Trades Council (CPBTC), and the leader, the Western States Petroleum Association.

Their specific legal objection is not yet clear, as the coalition's legal briefs will not be submitted until April 11.

Willy Myers of the CPBTC, the spokesperson for the groups suing the city, said the ban violates state land-use law by preventing fossil fuel development within the city of Portland.

More specifically, Myers warned of the

economic hardship that would result if a landslide wiped out the Portland Airport's storage container of jet fuel near Highway 30. Under the fossil fuel ban, Myers warned, a new storage facility would be difficult to build, and "a billion dollars in revenue" could potentially be lost from the delay.

In fact, the Bureau of Planning and Sustainability's code changes from December repeatedly state that jet fuel storage for the Portland Airport is not subject to the ban. The new rules also allow for the construction of new bulk fossil fuel storage facilities whose capacity is under 2 million gallons, and provide for 10 percent growth in existing storage facilities when seismic upgrades occur.

Myers said the CPBTC supports the transition away from fossil fuels, but did not provide comment on how a transition could happen, saying simply "I represent folks in the construction industry."

The Portland Business Alliance declined to be interviewed for this article.

Across the U.S. examples abound of regulated industries attempting to sue local governments to prevent laws that affect their bottom-line. In the case of the fossil fuel industry, the need to experiment with local laws has become increasingly urgent.

In the summer of 2015 hot water in the Columbia River killed half the sockeye salmon run. In February a new study from the journal *Geology* found that 52,000 square miles of permafrost is disintegrating in Northwest Canada. Such permafrost is currently sequestering massive quantities of methane, which has a global warming potential 86 times that of carbon dioxide over a 20 year period. If such melting continues unabated, warming cycles around the globe could become unstoppable.

Taking account of such risks on a global and local scale, local governments in the Northwest have increasingly taken direct legal action against the fossil fuel industry.

This May voters in Coos County will consider Measure 6-162, which would make fossil fuel exports in Coos County illegal – and provide a referendum on exporting liquefied natural gas via Jordan Cove LNG and the Pacific Connector

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