



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Hazardous Substances; Recovery of Costs

MEETING DATE: February 1, 1995

PREPARED BY: Hank Howard, Fire Chief

RECOMMENDED ACTION:

That the City Council adopt the attached ordinance proposal to the Municipal Code as section 8.20.010 "Hazardous Substances, Recovery of Costs."

BACKGROUND INFORMATION:

It is necessary that the City of Lodi has a mechanism in place that allows for prompt mitigation of a hazardous substance release within the corporate limits of the City. There are several areas of existing State and Federal regulation that allows for cost recovery for such discharges; however, it is felt that a City ordinance would add credence to the necessity for such abatement. The City is liable for cleanup of hazardous substance releases on City streets, City property and discharges into the City drainage system. If a responsible party is known; the costs for those cleanups may be recovered.

* The ordinance draft was reviewed by the Lodi Chamber Industrial Group Members and no negative comments were received.*

Hank Howard
Fire Chief

APPROVED: _____

THOMAS A. PETERSON
City Manager

recycled paper

ORDINANCE NO. 1606

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AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI
CREATING CHAPTER 8.20 OF THE CITY CODE ENTITLED
"HAZARDOUS SUBSTANCES; RECOVERY OF COSTS"

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WHEREAS, the City Council finds and declares that "hazardous substances," as defined herein, discharged upon or into property or facilities located within the corporate limits of the City of Lodi pose a great risk to the health and safety of the general public; and

WHEREAS, the City Council has determined that prompt clean-up, abatement and removal of hazardous substances is vital to the protection of the health and safety of the citizens of the City of Lodi, and

WHEREAS, the United States Environmental Protection Agency (EPA) and the California Department of Toxics and Substances Control (DTSC) has promulgated rules by which local government agencies may, under certain circumstances, receive funds from the EPA or DTSC for unreimbursed costs associated with clean-up, abatement and removal of hazardous substances from those persons responsible for the discharge of such hazardous substances;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

SECTION 1. Chapter 8.20 Hazardous Material and Substances, Recovery of Costs is hereby added to the Lodi Municipal Code to read as follows:

8.20.010 Definitions. As used in this Section, the following terms shall be defined as follows:

(a) "Costs" mean those necessary and reasonable costs incurred by the City in connection with investigation, mitigating, minimizing, removing or abating discharges of hazardous materials and substances, including, but not limited to, the following: Actual labor costs of City personnel or its authorized agents, cost of equipment operation and rental, cost of expendable items including, but not limited to, firefighting foam, chemical

extinguishing agents, absorbent material, sand, recovery drums, goggles and protective clothing (both structural and chemical - protective, disposable or standard use).

(b) "Discharge" means any intentional or unintentional action or omission resulting in the releasing, spilling, pumping, pouring, emitting, emptying or dumping of a hazardous substance upon public or private property located within the corporate limits of the City of Lodi.

(c) "Hazardous Substances" mean any substances or materials in a quantity or form, which, in the determination of the Fire Chief or his authorized designee, poses an unreasonable and imminent risk to the life, health, safety or welfare of persons or property within the City of Lodi and shall include, but not be limited to those hazardous substances listed in Health and Safety Code §25316, State of California; Labor Code 6382, State of California; N.F.P.A. Guide on Hazardous Materials; EPA and DOTSC list of extremely hazardous substances.

(d) "Persons" means one or more individuals, partnerships, corporations, trusts, joint ventures, associations or any other entities or any combination thereof.

(e) "Responsible Persons" or "Responsible Parties" shall mean those persons described in 42 USC §9607(A).

8.20.020 Clean-up and Abatement.

(a) The Fire Department is hereby authorized to take such steps as are necessary to clean up, remove or abate the effects of any hazardous substances discharged upon or into public or private property (including streets and appurtenances) or facilities located within the corporate limits of the City.

(b) Any person or persons responsible for allowing an unauthorized discharge of hazardous substances that requires emergency action by the Fire Department or its authorized agents in order to protect the public health, safety and welfare shall be jointly and severally liable to the City of Lodi for the costs incurred by the City in investigating, mitigating, minimizing, removing and abating any such discharge.

(c) When responding to the emergency caused by the unauthorized discharge of hazardous substances, the Fire Department shall keep a detailed record of the cost attributable thereto.

(d) The intrusion into a river, lake, canal, pond or other waterway by a surface or rail transportation vehicle shall constitute a discharge of materials so described in Section 1(b) due to the release of hydrocarbon materials such as fuel and oils and the potential for hazardous cargo. To reduce environmental damage, the Fire Department may authorize underwater diving operations to assist in said vehicle removal.

(e) The Fire Department may activate the County Joint Hazardous Materials Response Team to assist in scene mitigation on their behalf for emergencies that require their response.

8.20.030 Cost Recovery; Penalties; Other Remedies.

(a) Any person or persons responsible for causing or allowing an unauthorized discharge of hazardous substances shall reimburse the City of Lodi for the full amount of all costs, as defined herein, associated with the investigation, mitigation, minimizing, removing and abating any such discharge within a period of thirty (30) days after receipt of an itemized bill for such costs from the City of Lodi. Reasonable administrative fees are inclusive.

(b) Any person or persons responsible for causing or allowing an unauthorized discharge of hazardous substances and who fails to reimburse the City of Lodi within the time set forth in subsection (3)a hereof, shall be subject to additional penalties or lien for costs and damages upon the real property owned by the responsible party which is subject to, or affected by the removal and remedial action. This lien shall attach regardless of whether a responsible party is solvent. The City shall not be considered a responsible party for a hazardous substance release site because a claim and lien is imposed pursuant to this section.

(c) The remedy provided for in this section shall be supplemental to and in addition to all other available remedies at law and equity.

(d) Funds recovered under this Cost Recovery Ordinance will be charged back to the City department that provided services or materials on the problem. It is the intent of this ordinance that pre-stock levels of response equipment inventories be replenished in a prompt manner and specific operational funds be replenished for the expenditures that occur.

SECTION 2. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. AUTHORITIES.

Uniform Fire Code, 1991, Article 80, Section 105 (e)

Uniform Fire Code, 1991, Article 2, Section 101 (h)

Health and Safety Code, 13009.6

Vehicle Code, 17300 (b)

Vehicle Code, 23113 (b)

Fish and Game Code, 5655 (a)

SECTION 4. This ordinance shall be published one time in the "Lodi News Sentinel", a daily newspaper of general circulation printed and published in the City of Lodi and shall be in force and take effect

thirty days from and after its passage and approval.

Approved this day of

STEPHEN J. MANN
Mayor

Attest:

JENNIFER M. PERRIN
City Clerk

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State of California
County of San Joaquin, ss.

I, Jennifer M. Perrin, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1606 was introduced at a regular meeting of the City Council of the City of Lodi held February 1, 1995 and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held _____, 1995 by the following vote:

Ayes: Council Members -
Noes: Council Members -
Absent: Council Members -
Abstain: Council Members -

I further certify that Ordinance No. 1606 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

JENNIFER M. PERRIN
City Clerk

Approved as to Form

BOBBY W. McNATT
City Attorney

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