

ORDINANCE NO. 1738

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI AMENDING
TITLE 8 – HEALTH AND SAFETY – CHAPTER 8.24, COMPREHENSIVE
MUNICIPAL ENVIRONMENTAL RESPONSE AND LIABILITY, BY REPEALING
AND REENACTING SECTION 8.24.010 – “DEFINITIONS,” SUBSECTION “2,” AND
8.24.040 - “LIABILITY,” SUBSECTION “F,” TO THE LODI MUNICIPAL CODE
RELATING TO ABATEMENT ACTION COST AND RECOVERY ISSUES

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

SECTION 1. Section 8.24.010 “Definitions” Subsection “2” of the Lodi Municipal Code is hereby repealed and reenacted to read as follows:

2. The term “abatement action costs” means:

A. at or in connection with any site (or any separate subdivision or area within a site) at which the city is not liable under 42 U.S.C. § 9607 for the costs of response to site conditions resulting in whole or in part from the release or threatened release of hazardous substances to which the city has responded or is responding under this chapter, any and all legal, technical, or administrative fees and costs, and interest and other costs of financing incurred by the city in performing or preparing to perform an abatement action in compliance with the requirements of this chapter. The term “abatement action costs” shall specifically include, but shall not be limited to, any and all of the following costs incurred by the city:

i. to retain expert assistance in health, law, engineering, and environmental science, expert witness services and legal fees and reasonable costs of litigation (including, but not limited to, internal costs of the city attorney's office or outside legal counsel deemed necessary at the sole discretion of the city to effectively respond to conditions at and emanating from the site) to study, investigate, abate, remove, remediate, or respond to an actual or threatened environmental nuisance or any endangerment to the public health, welfare, or the environment that may be presented by an actual or threatened environmental nuisance;

ii. to investigate or respond to the existence, or threat of an environmental nuisance;

iii. to monitor, assess, or evaluate an environmental nuisance or any endangerment to the public health, welfare, or the environment that may be presented by an actual or threatened environmental nuisance;

iv. to prevent, minimize, or mitigate an environmental nuisance or any endangerment to the public health, welfare, or the environment that may be presented by an actual or threatened environmental nuisance;

v. to oversee and monitor the performance by any responsible party of any investigation or abatement action in response to a condition which is or may be an environmental nuisance;

vi. to review, comment on, or revise a responsible party's plans and proposals submitted pursuant to Section 8.24.050(E) or to oversee and monitor the performance by any responsible party of any of the monitoring and testing activities which may be required pursuant to Section 8.24.050(E);

vii. to prepare for or undertake necessary enforcement activity authorized by this Chapter 8.24, including the recovery of abatement action costs incurred or to be incurred by the city or any injunctive relief authorized by this chapter to respond to an environmental nuisance, including enforcement activity deemed necessary by the city to obtain information and site access authorized by this chapter; and

viii. costs of investigation and evaluation, as authorized by the city council, of such financing, with recourse to the maximum extent available solely against the present and future assets and recoveries pledged to comprehensive municipal environmental response fund or any sub-fund of the comprehensive municipal environmental response fund created by the city council as authorized by Section 8.24.070(A), as may be necessary and proper to accomplish the purposes set forth in this chapter; and

ix. costs of issuing, servicing, and retiring of any financing instruments authorized by the city council as provided in Section 8.24.070, with recourse to the maximum extent available solely against the present and future assets and recoveries pledged to the comprehensive municipal environmental response fund or any sub-fund of the comprehensive municipal environmental response fund created by the city council as authorized by Section 8.24.070(A); and

B. At or in connection with any site (or any separate subdivision or area within a site) to which the city has responded or is responding under this chapter, and at which the city is liable under 42 U.S.C. § 9607 for the costs of response to site conditions resulting in whole or in part from the release or threatened release of hazardous substances, all such fees and costs included within the definition set forth in subsection 2(a) of this Section 8.24.010, except that such term shall not for purposes of this chapter include, at or in connection with any site (or any separate subdivision or area within a site) to which this subsection 2(b) applies, any attorneys fees and costs, expert witness fees and costs or other litigation costs incurred or to be incurred by the city in the preparation or conduct of any litigation to recover abatement action costs pursuant to this chapter, or to secure judicial abatement of an environmental nuisance pursuant to this chapter.

C. Notwithstanding the provisions of subparagraphs (a) and (b) of this subsection 2, the term shall not include any costs incurred to compel compliance with an information demand issued pursuant to Section 8.24.050(B) of this chapter prior to the entry of a judicial order upholding that information demand, in whole or in part.

SECTION 2. Section 8.24.040 - "Liability" Subsection "F" of the Lodi Municipal Code is hereby repealed and reenacted to read as follows:

F. Recovery of Attorneys Fees By Prevailing Party Pursuant to California Government Code Section 38773.5.

1. Reasonable litigation expenses, including attorneys and expert witness fees and costs, and litigation costs may be recovered by the prevailing party in any action or administrative proceeding brought or continued in whole or in part pursuant to this chapter by the city attorney:

a. to recover abatement action costs incurred and to be incurred by the City of Lodi;

b. to secure or compel compliance with an Abatement Action Order issued pursuant to this chapter, to enforce an information demand, or an access, inspection or monitoring order, following a judicial order upholding the demand or order in whole or in part; or

c. to secure abatement of an actual or threatened endangerment to the public health, welfare, or the environment arising out of, in whole or in part, an actual or threatened environmental nuisance.

2. Notwithstanding Paragraph 1 of this Subsection F, the recovery of such fees and costs, including attorneys' fees, by the prevailing party is strictly limited to those individual actions or a proceeding in which the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees.

SECTION 3. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 4. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 5. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 6. Effect of On-going Actions. The effect of this Ordinance upon preceding or on-going actions or proceedings shall be determined in accord with the following provisions of this section 6:

(A) Notwithstanding the repeal of Section 8.24.010(2) and Section 8.24.040(F) of Title 8 of the Health and Safety Code by operation of sections 1 and 2 of this Act, any action taken pursuant to those Subsections shall remain in effect, and be subject to Chapter 8.24 (commencing with Section 8.24.010) of Title 8 of the Health and Safety Code, as including the subsections reenacted by section 1 of this Act.

(B) The repeal and reenactment of Section 8.24.010(2) and Section 8.24.040(F) of Title 8 of the Health and Safety Code by sections 1 and 2 of this Act shall not terminate, affect, or modify any proceeding, order, or agreement issued or entered into by the City, or any officer or employee of the City pursuant to Chapter 8.24, or any rights or obligations arising out of or pursuant to those provisions, and notwithstanding the effective date of this act, the provisions of Chapter 8.24 (commencing with Section 8.24.010) of Title 8 of the Health and Safety Code, as including the subsections reenacted by sections 1 and 2 of this Act, shall apply retroactively to those proceedings, orders, or agreements.

SECTION 7. 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 take effect thirty days from and after its passage and approval.

Approved this 7th day of January, 2004


LARRY D. HANSEN
Mayor

Attest:



SUSAN J. BLACKSTON
City Clerk

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State of California
County of San Joaquin, ss.

I, Susan J. Blackston, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1738 was introduced at a regular meeting of the City Council of the City of Lodi held December 3, 2003, and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held January 7, 2004, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Howard, and Land

NOES; COUNCIL MEMBERS – Hitchcock and Mayor Hansen

ABSENT: COUNCIL MEMBERS – None

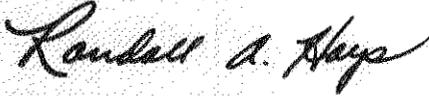
ABSTAIN: COUNCIL MEMBERS – None

I further certify that Ordinance No. 1738 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.



SUSAN J. BLACKSTON
City Clerk

Approved as to Form:



RANDALL A. HAYS
City Attorney