

# ORDINANCE NO. 2000-038

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF OCT - 3 2000

**AN ORDINANCE ADDING CHAPTER 18.44 TO THE SACRAMENTO CITY CODE, RELATING TO THE ADOPTION AND IMPLEMENTATION OF AN ENVIRONMENTAL OVERSIGHT PROGRAM (EOP) TO REGULATE THE REMEDIATION AND REDEVELOPMENT OF THE DOWNTOWN RAILYARDS**

**BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:**

**SECTION 1.**

Chapter 18.44 is added to the Sacramento City Code, to read as follows:

**Chapter 18.44**

**DEVELOPMENT IN DOWNTOWN RAILYARDS**

**Section 18.44.010 Findings.**

The Sacramento City Council hereby finds and declares that:

- (a) The downtown Sacramento Railyards (Railyards), owned for many years by Southern Pacific Transportation Company (SPTCo) and currently owned by Union Pacific Railroad Company (UPRR), successor-in-interest to SPTCo., was used for over 100 years as a locomotive construction, repair, and maintenance facility. As a result of these activities, the surface and subsurface soils were impacted to some degree by hazardous and toxic materials and chemicals across much of the site; additionally impacted groundwater underlies some portions of the Railyards Site.

8/11/2000

FOR CITY CLERK USE ONLY

ORDINANCE NO. 2000-038

DATE ADOPTED: OCT - 3 2000

- (b) The Railyards site is the subject of an Enforceable Agreement, dated June 2, 1988, as amended, between the Department of Toxic Substances Control ("Department" or "DTSC") and SPTCo. This Enforceable Agreement establishes the requirements for investigation and remediation of hazardous materials at the Railyards.
- (c) SPTCo, and its successor-in-interest, UPRR, have obtained Department certification of remediation of hazardous materials completed on some portions of the Railyards site, and intend to complete remediation on additional portions of the site, to levels required for various types of land uses. When the hazardous materials present on a portion of the site are remediated to levels that are acceptable for some land uses, but not for others, the Department requires that land use restrictions ("deed restrictions") be recorded to ensure that inappropriate exposures to hazardous materials do not occur, by restricting the future use of such portion of the site to only those land uses that are appropriate for the level of remediation attained. Current deed restrictions allow for commercial and industrial uses; however, under the deed restrictions, all other land uses, excavation of soil, and extraction of ground water are not allowed without prior Department approval.
- (d) As various portions of the Railyards site are remediated and/or following the completion of remediation at the Railyards, UPRR proposes to redevelop the Railyards site for mixed commercial, residential, open space and public uses, pursuant to the Railyards Specific Plan and other planning documents that have been or may be adopted or amended by the City. Redevelopment of the Railyards will require various City development approvals, and it is important that hazardous materials issues be considered at appropriate steps in the development approval process.
- (e) The Specific Plan establishes the allowable land uses for each area of the Railyards, as well as remediation approaches for each land use. These Land Use Specific Remediation Approaches, which have been approved by DTSC, are designed to eliminate any risk from human exposure to soil. Pursuant to the Specific Plan, the Railyards Special Planning District and other applicable documents, there are linkages between completion of remediation approved by DTSC and City issuance of development approvals.

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8/11/2000

FOR CITY CLERK USE ONLY

ORDINANCE NO. 2000-038

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- (f) Rather than requiring separate and uncoordinated City and Department review, approval and oversight of every application for development in the Railyards, it would be more efficient and would ensure more orderly and timely redevelopment, if a coordinated program were adopted for joint City and Department regulation of redevelopment activities in the Railyards. Such a coordinated program would: (i) allow the City to exercise its authority under the police power to regulate land use, without regulating or taking on any liability for site remediation, which responsibilities lie with the Department and UPRR, respectively; and (ii) allow the Department to administer remediation activities pursuant to the Department's authority under the California Health and Safety Code, without the necessity of becoming involved in the City's regulation of land use at the Railyards site.
- (g) On or about December 13, 1994, the City of Sacramento, SPTCo and DTSC entered into a Memorandum of Understanding (MOU), the purpose of which was to establish general provisions for coordination of remediation and redevelopment of the Railyards and to enable orderly and timely remediation and redevelopment of the Railyards in a manner fully protective of human health and the environment.
- (h) Pursuant to the MOU, the DTSC and the City agreed to establish a Program for joint City and DTSC administration of deed restriction provisions affecting development of the Railyards. The deed restriction provisions to be administered by the City and Department are restrictions on excavation, land use changes, and extraction of ground water. As set forth in the MOU, the goals of the Program for joint City and DTSC administration are to ensure that: (i) land use is consistent with completed remediation; (ii) specific development projects are compatible with remediation achieved; (iii) excavation, soil handling, and dewatering activities are observed by an environmental oversight authority; (iv) Pre-tested Soil Zones are established; (v) development is protective of human health and the environment; and (vi) procedures for the City and DTSC to work together efficiently to carry out their respective administrative and regulatory duties are established.
- (i) Under the Program contemplated by the MOU, and pursuant to procedures to be developed by DTSC, the City is to be given the right, responsibility and authority to approve development and excavation on the Railyards without prior DTSC approval of each project that would be required in the absence of such a Program. As expressly stated in the MOU, the parties in executing

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8/11/2000

FOR CITY CLERK USE ONLY

ORDINANCE NO. 2000-038

DATE ADOPTED: OCT - 3 2000

that document did not intend to alter in any way the legal authority or jurisdiction that each possesses pursuant to constitutional, statutory or common law. While the City does not relinquish its police power to regulate in the interest of the health, safety and welfare of its citizens, it has no intention of regulating or taking on liability for site remediation, which responsibilities lie with the DTSC and SPTCo, UPRR or their successors, respectively.

- (j) Pursuant to the MOU, City joint administration of the deed restrictions requires the establishment by the City of an Environmental Oversight Program (EOP), approved by DTSC, to regulate development and excavation on the Railyards. Since the execution of the MOU, the City and DTSC, with appropriate involvement of, and input from, SPTCo and UPRR, have met, conferred, discussed and participated in the preparation of a Program designed to serve as an EOP. At this time, it is anticipated that the EOP may be administered by a third party entity retained by the City, and approved by DTSC after appropriate input by UPRR and its successors, to be known and referred to as the Environmental Oversight Authority ("EOA").
- (k) The purposes of this Ordinance are: (i) to establish a process for adoption and administration of the EOP, including procedures generally requiring UPRR, its successor-in-interest or the developer or constructor at the Railyards site to pay the costs incurred by City to administer the EOP; and (ii) to establish certain additional requirements to ensure that the basic purposes of the MOU are satisfied. The basic purposes of the MOU include: i) to provide for a coordinated, joint administration of deed restrictions by City and DTSC, in order to promote more orderly and timely redevelopment; and ii) to do so without subjecting the City or its officials, employees or agents, including any independent contractors who may serve in the capacity of Environmental Oversight Authority, to any greater liability than they would incur if the deed restrictions were administered solely by DTSC.
- (l) In fulfillment of these goals, this ordinance is adopted in order to authorize City Council adoption of an Environmental Oversight Program governing redevelopment activities at the Railyards site, and to provide a means for enforcement of the plan.

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8/11/2000

FOR CITY CLERK USE ONLY

ORDINANCE NO. 2000-038

DATE ADOPTED: OCT - 3 2000

**Section 18.44.020 Definitions.**

When used in this Chapter, the following terms shall have the meanings set forth in this Section:

**Building Official:** The head of the City's Building Department, or his or her authorized representative(s).

**City:** The City of Sacramento.

**Department:** The California Department of Toxic Substances Control.

**Environmental Oversight Authority:** The person or entity retained and responsible for administration of the Environmental Oversight Program adopted pursuant to this Chapter.

**Environmental Oversight Program:** The program for oversight of remediation of hazardous materials at the Railyards site, adopted pursuant to this Chapter.

**MOU:** The Memorandum of Understanding entered into on December 14, 1994, by and between the City, the Department, and the Southern Pacific Transportation Company (identified as City Agreement No. 94-201), concerning remediation and redevelopment of the Sacramento Locomotive Works site.

**Person:** Any person, company, firm, partnership, business or other entity, other than the City, its officers and employees.

**Railyards:** The Southern Pacific Transportation Company's former Sacramento Locomotive Works site located in downtown Sacramento, as further described in the City's Railyards Specific Plan.

**SPTCo:** The Southern Pacific Transportation Company.

**UPRR:** The Union Pacific Railroad Company, successor-in-interest to the SPTCo at the Railyards site.

**Section 18.44.030 Environmental Oversight Program**

The City Council may adopt, by resolution, an Environmental Oversight Program (EOP) developed in accordance with the provisions of the MOU, governing redevelopment activities at the Railyards site. The City Council may amend the EOP by resolution as needed, provided that the amendments shall be consistent with the MOU

**Section 18.44.040 Process for Adoption and Amendment of EOP**

The EOP shall be adopted by resolution by the City Council following at least one hearing before the Planning Commission and the City Council. Such hearings shall be noticed and held in the same manner as general and specific plans and amendments thereto. To the extent not otherwise required, notice of hearings on adoption or amendment of the EOP shall be given to UPRR, so long as it has an ownership interest in the Railyards site, and any and all other owners of property within the Railyards site.

**Section 18.44.050 Requirements of EOP**

An EOP adopted pursuant to Section 18.44.030 above shall include, at a minimum, the following provisions: provisions to ensure that the remediation obligations of the Railyards Specific Plan, Enforceable Agreement and MOU are satisfied, including but not limited to remediation consistent with the Land Use Specific Remediation Approaches (LUSRAs); provisions to address requirements for "T" suffix and "T" suffix removal, Clean Fill and Installation of Clean Fill, Pre-tested Soil, testing, handling, transporting, stockpiling and storage of materials excavated in preparation for and during construction, construction dewatering, and construction air monitoring conducted on the Railyards site; and provisions that apply when construction is carried out at the Railyards site by the City, such as a street constructed by the City rather than by UPRR, its successor-in-interest or a developer or constructor.

**Section 18.44.060 DTSC Approval of EOP**

The EOP or amendments thereto shall not be used to govern remediation unless and until DTSC has approved the EOP or amendments thereto.

**Section 18.44.070 Use and Applicability of EOP**

- (a) General: If application of the EOP and oversight by an EOA is requested or required, prior to issuance of a building permit or grading permit to undertake

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8/11/2000 FOR CITY CLERK USE ONLY  
ORDINANCE NO. 2000-038  
DATE ADOPTED: OCT - 3 2000

development, construction, excavation or any other work on or at the Railyards site for which a building or grading permit is required, UPRR or its successor-in-interest and, as appropriate, the developer or constructor, shall be required to enter into the following agreement(s) with the City:

- i) an agreement to abide by the EOP;
  - ii) a funding agreement pursuant to which UPRR or its successor-in-interest or the developer or constructor agrees to pay the costs of administration of the EOP, including the reasonable costs and expenses incurred by the City and the EOA, and pursuant to which UPRR or other contracting party will be required to deposit sufficient funds or provide adequate security in advance to cover anticipated costs of administration of the EOP for the construction or development of the Railyards site; and
  - iii) a liability and indemnification agreement, satisfactory to and approved as to form by the City Attorney, which is consistent with the terms and conditions of the MOU, which ensures that City and the EOA incur no greater liability than the City and the EOA would incur if no EOP were adopted and the City did not participate in oversight of remediation of hazardous materials.
- (b) DTSC Oversight of Remediation: It is anticipated that the EOP and EOA will be utilized to oversee much, if not all, of the development of the Railyards site. However, use of the EOP and the EOA is discretionary, both with the CITY and with UPRR and its successors, and as appropriate, developers and constructors at the Railyards site. Nothing in this Chapter is intended to prevent or preclude UPRR and its successors, and as appropriate, developers and constructors, from deciding to forego use of the EOP and EOA and instead undertaking construction and other activities under the direct oversight of DTSC after obtaining all necessary permits from the CITY. Further, nothing in this Chapter is intended to prohibit, preclude or interfere with the authority of DTSC to oversee remediation of hazardous materials at the Railyards site, and as appropriate, to take over the oversight of remediation, in its sole discretion.

#### **Section 18.44.080 Enforcement.**

- (a) Stop Work Order: Whenever any work is being done at the Railyards in violation of the provisions of the EOP adopted by the City Council, the Building Official may order the work stopped by serving a written notice of

such violation and stop work order upon any person engaged in, doing, or causing such work to be done, or, if no such person is present at the Railyards site, by posting such notice in a conspicuous place. Any such person shall immediately stop work until authorized by the Building Official to proceed with the work.

- (b) Penalty: Any person violating any provision of the EOP or violating a stop work order shall be guilty of a misdemeanor. Such violations shall constitute violations of this Code and shall be subject to the remedies and penalties specified in Section 1.28.010 of this Code, provided that the remedies and penalties provided therein are not exclusive, and are in addition to any other remedy or penalty provided or authorized by any law or regulation or by any other provision of this Code. Nothing in this Chapter shall prevent the City from using one or more of such other remedies to address violations.
- (c) Right-of-Entry: The Building Official may enter the Railyards at all reasonable times as needed to conduct inspections and/or determine whether work is being performed in accordance with the provisions of the EOP. If such entry is refused or prevented, the City shall have recourse to every remedy provided by law to secure entry.

**Section 18.44.090 No City Liability.**

Nothing contained in this ordinance or in the EOP adopted or amended pursuant to this ordinance shall:

- (a) affect the responsibility and/or liability of the owner(s) of the Railyards site for the remediation of hazardous materials, under applicable provisions of Federal, State or local laws or regulations; nor

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8/11/2000

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ORDINANCE NO. 2000-038

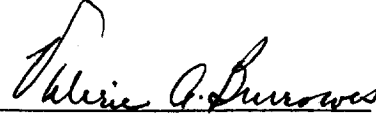
DATE ADOPTED: OCT - 3 2000

- (b) impose, or be construed to impose, any responsibility or liability for such remediation upon the City.

DATE PASSED FOR PUBLICATION: September 26, 2000  
DATE ENACTED: **OCT - 3 2000**  
DATE EFFECTIVE: November 2, 2000

  
MAYOR

ATTEST:

  
CITY CLERK

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8/11/2000

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