

ORDINANCE NO. 93-062

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF NOV 09 1993

**AN ORDINANCE AMENDING SECTION 15.06.601 OF THE
SACRAMENTO CITY CODE, RELATING TO THE PERSONS LIABLE
FOR COSTS INCURRED BY CITY FIRE DEPARTMENT AND OTHER
CITY AGENCIES TO ABATE HAZARDOUS SUBSTANCES**

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

SECTION 1.

Section 15.06.601 of the Sacramento City Code is hereby amended to read as follows:

§ 15.06.601 Hazardous Materials Cleanup -- Liability for Costs.

- (a) The threatened or actual release, discharge, deposit, abandonment, improper storage or improper use of any hazardous substance or waste is hereby declared to be a public nuisance subject to summary abatement.
- (b) Without limiting the authority of any other city agency or department, the fire chief is authorized to clean up or abate the effects of any hazardous substance or waste unlawfully released, discharged, deposited, or abandoned upon or into any property, water or facilities within the city, or within any other area where the city is the primary provider of fire protection services, or to take necessary steps to prevent a threatened release, discharge, or deposit.
- (c) The following described persons shall be jointly and severally liable to the city for the payment of all costs incurred by the city as a result of such cleanup, abatement, or preventive activity:
 - (1) The person or persons whose negligent or willful act or omission proximately caused the threatened or actual release, discharge or deposit, or who abandoned the hazardous substance or waste; and

- 1 -

FOR CITY CLERK USE ONLY

ORDINANCE NO.: **93-062**

DATE ADOPTED: **NOV 09 1993**

- (2) The person or persons who owned or had custody or control of the hazardous substance or waste at the time of the threatened or actual release, discharge, deposit, or abandonment, without regard to fault or proximate cause; and
 - (3) The person or persons who owned or had custody or control of the container which held the hazardous substance or waste at the time of or immediately prior to the threatened or actual release, discharge, deposit, or abandonment, without regard to fault or proximate cause; and
 - (4) The person or persons who are tenants in possession of the property upon which the hazardous substance or waste was released, discharged, deposited, or abandoned, or on which the threat of release, discharge or deposit existed, without regard to fault or proximate cause; and
 - (5) The person or persons who own the property, water or facilities upon or into which the hazardous substance or waste was released, discharged, deposited, or abandoned, or on which the threat of release, discharge or deposit existed, without regard to fault or proximate cause; and
 - (6) Any person or persons who by contract, agreement, or otherwise, arranged for disposal, treatment, or transport of the hazardous substance or waste, without regard to fault or proximate cause, if the threatened or actual release, discharge, deposit, or abandonment occurred during disposal, treatment, or transport; and
 - (7) Any person or persons who accepted the hazardous substance or waste for transport, without regard to fault or proximate cause, if the threatened or actual release, discharge, deposit, or abandonment occurred during transport.
- (d) There shall be no liability under subsection (c) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release, threat of release, or abandonment of a hazardous substance and the damages resulting therefrom were caused solely by:
- (1) an act of God;
 - (2) an act of war;

- 2 -

FOR CITY CLERK USE ONLY

ORDINANCE NO.: NOV 09 1993
93-062

- (3) an act or omission of a third party other than an employee or agent of the person, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the person (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the person establishes by a preponderance of the evidence that (i) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (ii) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or
- (4) any combination of the foregoing subdivisions (1), (2) and (3).
- (e) Whenever it is practical to do so, the fire chief shall attempt to recover abatement costs from parties described in subdivisions 1, 2, 3, 6 and 7 of subsection (c) before seeking recovery from parties described in subdivisions 4 and 5 of subsection (c).
- (f) In the event that any person undertakes, either voluntarily or upon order of the fire chief or other city official, to clean up or abate the effects of any hazardous substance or waste unlawfully released, discharged, deposited, or abandoned upon or into any property, water or facilities within the city, the fire chief may take such action as is necessary to supervise or verify the adequacy of the cleanup or abatement. The persons described in subsection (c) shall be liable to the city for all costs incurred as a result of such supervision or verification.
- (g) For purposes of this section, "hazardous substance or waste" shall include:
- (1) Any hazardous substance or hazardous waste as defined in Sections 71.01.110(g) and 71.01.110(h) of this code; and
 - (2) Any hazardous waste as defined in 42 U.S.C. §6903(5); and
 - (3) Any hazardous substance as defined in 42 U.S.C. §9601(14), California Health and Safety Code §25316, or California Water Code §13050(p); and
 - (4) Any petroleum or petroleum fraction; and

- (5) Any other hazardous substance, waste, or material as defined in any state or federal law or regulation.
- (h) For purposes of this section, costs incurred by the city shall include, but shall not necessarily be limited to, the following: actual labor costs of city personnel, including benefits and administrative overhead; cost of equipment operation; cost of materials obtained directly by the city; and costs of any contract labor and materials.
- (i) For purposes of this section, "person" shall include any individual, firm, partnership, corporation, association, governmental entity, district, special district, trust, or joint stock company.
- (j) Payment shall be due and payable no later than 30 days after the date of billing. A penalty of 10% or \$100.00, whichever is greater, shall be imposed if payment is not received within 60 days after the date of billing.
- (k) The remedies provided by this section shall be in addition to any other remedies provided by law.
- (l) The recoverable costs under this section shall include the cost of fire suppression services, if the need for the services is the proximate result of a release, discharge, deposit, abandonment, improper storage or improper use which constitutes a public nuisance.

DATE PASSED FOR PUBLICATION: November 2, 1993

DATE ENACTED: November 9, 1993

DATE EFFECTIVE: December 9, 1993


MAYOR

ATTEST:


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- 4 -

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ORDINANCE NO.: 93-062

NOV 09 1993