

ORDINANCE NUMBER O- 19130(NEW SERIES)

ADOPTED ON DEC 09 2002

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 4 OF THE MUNICIPAL CODE BY ADDING DIVISION 7, SECTIONS 54.0701, 54.0702, 54.0703, 54.0704, 54.0705, 54.0706, 54.0707, 54.0708, 54.0709, 54.0710, 54.0711, AND 54.0712, RELATING TO THE INVESTIGATION AND CLEANUP OF CONTAMINATED PROPERTY; AND AUTHORIZING THE CITY MANAGER TO IMPLEMENT AND ENFORCE THE CALIFORNIA LAND ENVIRONMENTAL RESTORATION AND REUSE ACT, CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 25401-25402.3 AND 57008-57010.

WHEREAS, abandoned, underused, or blighted properties, which are likely to be, or are perceived to be, adversely affected by hazardous material or waste contamination, commonly referred to as "Brownfield" sites, exist within the City; and

WHEREAS the Council of the City of San Diego takes legislative notice of the findings of the State Legislature at California Health and Safety Code section 25100(b) that: "Long-term threats to public health and to air and water quality are posed by . . . the inappropriate handling, storage, use, and disposal of hazardous wastes;" and

WHEREAS the Council of the City of San Diego takes legislative notice of the findings of the State Legislature at California Health and Safety Code section 25218(d) that: "Abandonment or illegal disposal of household hazardous waste and hazardous waste from small businesses . . . is a threat to public health and safety and to the environment"; and

WHEREAS, the City desires to encourage the remediation of these "Brownfield" sites in order to address the public health and safety and environmental harm they pose and to encourage

their transformation into usable properties that contribute to the economic foundation of the City; and

WHEREAS, the City endorses the use of the California Land Environmental Restoration and Reuse Act, located at California Health and Safety Code sections 25401-25402.3 and 57008-57010, to investigate and/or cleanup "Brownfield" sites so that they may be transformed into properties which contribute services, jobs, and public benefits to the City; and

WHEREAS the Council of the City of San Diego takes legislative notice of the contents of Manager's Report No. 02-154 and its accompanying oral and documentary evidence regarding the Brownfield Restoration Program as presented before the Public Safety & Neighborhood Services Committee on July 10, 2002; and

WHEREAS, the City has determined that it is in the best interests of the City to implement and enforce the California Land Environmental Restoration and Reuse Act, California Health and Safety Code sections 25401-25402.3 and 57008-57010, and to delegate the authority to do so to the City Manager or designee; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 5, Article 4, of the San Diego Municipal Code is hereby amended by adding Division 7, Sections 54.0701, 54.0702, 54.0703, 54.0704, 54.0705, 54.0706, 54.0707, 54.0708, 54.0709, 54.0710, 54.0711, and 54.0712, to read as follows:

Division 7

Investigation and Cleanup of Contaminated Property

§ 54.0701 Findings

The Council of the City of San Diego finds and declares that:

- (a) Abandoned, underused, or blighted properties which may be adversely affected by *hazardous material* contamination exist within the City.

- (b) *Property* within the City containing *hazardous material* is a *public nuisance*.
- (c) The City desires to encourage remediation of these *properties* both to address the public health and safety and environmental concerns they may pose and to encourage the transformation of such *properties* into developable properties that contribute services, jobs, and other benefits to the City.
- (d) The City endorses the use of the *Act* for the above purposes.
- (e) The City has determined that it is in the best interests of the City to implement and enforce the *Act* and to designate the City Manager or designee as the City office responsible for implementing and enforcing the *Act*.

§ 54.0702 Purpose

It is the purpose of this Division to implement and enforce the *Act*, as currently constituted and as may be amended from time to time, and to designate the City Manager or designee as the City office responsible for implementing and enforcing the *Act*.

§ 54.0703 Definitions

All defined terms in this Division appear in italics. The definitions found in the *Act*, as currently constituted and as may be amended from time to time, shall be applicable to this Division. To the extent not defined therein, the words and phrases in this Division have the meanings set forth in this section.

“*Act*” means the California Land Environmental Restoration and Reuse Act located at California Health and Safety Code sections 25401-25402.3 and sections 57008-57010, as constituted on OCT 11 2001 and as may be amended from time to time.

“*Enforcement official*” has the same meaning as that in Municipal Code section 11.0210.

“*Hazardous material*” has the same meaning as that in California Health and Safety Code section 25401.1(b).

“*Local agency*” has the same meaning as that in California Health and Safety Code section 25401.1(c).

“*Oversight agency*” has the same meaning as that in California Health and Safety Code section 25401.1(d).

“*Person*” has the same meaning as that in California Health and Safety Code section 25401.1(e).

“*Properties*” or “*Property*” has the same meaning as that in California Health and Safety Code section 25401.1(h).

“*Public nuisance*” has the same meaning as that in Municipal Code section 11.0210.

“*Remedial action*” has the same meaning as that in California Health and Safety Code section 25401.1(k).

§ 54.0704 Designation of Local Agency

For purposes of satisfying the requirements of the *Act*, the City Council hereby designates the City Manager or designee as the City office responsible for implementing and enforcing the *Act*.

§ 54.0705 Enforcement Authority

The City Manager or designee is hereby authorized to implement and enforce the provisions of the *Act* and this Division. The City Manager or anyone designated by

the City Manager to be an *enforcement official* may exercise any enforcement powers provided in Division 1, Article 2, Chapter I, of this Code.

§ 54.0706 Geographical Boundaries

This Division and the *Act* shall be applicable within the city limits of the City of San Diego.

§ 54.0707 Authorized Actions

The City Manager or designee is authorized to take any and all actions which are authorized by the *Act* and are in compliance with all laws, ordinances, and regulations of the City of San Diego.

§ 54.0708 Authority to Enter Into Agreement With Oversight Agency

The City Manager is authorized to enter into agreements with one or more *oversight agencies*, selected in accordance with the *Act*. These agreements are intended to provide for review, oversight, and related activities as required under the *Act*, and for cost reimbursement to such *oversight agencies*.

§ 54.0709 Council Approval of Remedial Actions

A *remedial action* pursuant to the *Act* may only be initiated after the San Diego City Council, by resolution adopted by a majority vote:

- (a) approves the *remedial action*;
- (b) affirms the finding set forth in the *Act* at section 25401.4(j)(3); and
- (c) makes one or both of the findings set forth in the *Act* at section 25401.7(a)(1).

In addition, notice must be given to the *property* owner or operator pursuant to section 25401.7(b)(1) of the *Act* prior to initiating a *remedial action*.

§ 54.0710 Violations

It is unlawful for any *person* to violate any provision of this Division which includes all provisions of the *Act*.

§ 54.0711 Enforcement Remedies

Violations of the provisions of this Division and the *Act* may be prosecuted as misdemeanors subject to the fines and custody provided in Municipal Code section 12.0201. The City Manager or designee may also seek injunctive relief and civil penalties in the Superior Court pursuant to Municipal Code section 12.0202 or pursue an administrative remedy provided in Chapter I of this Code.

§ 54.0712 Strict Liability Offenses

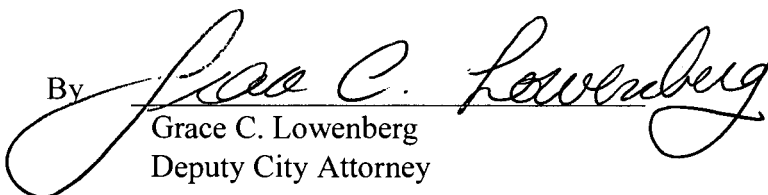
Violations of the provisions of this Division and the *Act* shall be treated as strict liability offenses regardless of intent.

Section 2. That the City Clerk is hereby directed to insert the effective date of this ordinance, once known, in the blank space in section 54.0703.

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By 
Grace C. Lowenberg
Deputy City Attorney

GCL:mb
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