

DATE ISSUED: July 3, 2002

REPORT NO. 02-154

ATTENTION: Public Safety & Neighborhood Services Committee
Agenda of July 10, 2002

SUBJECT: Brownfields Restoration Program

SUMMARY

Issues – 1) Should City staff develop a citywide Brownfields Restoration Program and return to the Committee within 180 days with a comprehensive implementation plan and associated costs for future consideration? 2) Should the City adopt an ordinance to implement the Brownfields Restoration Program? 3) Should City staff solicit owners of eligible properties to voluntarily participate in the Pilot Brownfields Project being conducted by the California Environmental Protection Agency?

Manager's Recommendations – 1) Direct City staff to develop a citywide Brownfields Restoration Program and return to the Committee within 180 days with a comprehensive implementation plan and associated costs for future consideration. 2) Adopt an ordinance to implement the Brownfields Restoration Program described below. 3) Direct City staff to find willing owners of eligible properties to voluntarily enter into an agreement with the California Environmental Protection Agency to participate in the Pilot Brownfields Project.

Other Recommendations – None

Fiscal Impact – Funding for this program has not been identified. The cost to begin implementation and participate in the Pilot Brownfields Project is estimated to be \$50,000 for FY 2003. In future years, annual costs for the program could potentially be as much as \$675,000 per year depending on the number, complexity, and degree of cooperation on each project. Funds from the Refuse Disposal Enterprise Fund cannot be used to fund this program because there is no nexus between these properties and the City's solid waste system. By accepting the Manager's recommendations, the Council

would be directing staff to develop a comprehensive implementation plan and funding for its future consideration.

BACKGROUND

The California Land Environmental Restoration and Reuse Act (Senate Bill No. 32 (Escutia, Chapter 764, Statutes of 2001) established the California Land Environmental Restoration and Reuse Program. SB 32 is a powerful new tool for the City of San Diego to facilitate and expedite the process of cleaning up and restoring abandoned or underutilized contaminated properties for productive new uses (see Attachment 1 – Program Elements for SB 32 Implementation).

SB 32 prescribes a process by which the City may determine whether certain properties are impaired by hazardous material contamination and, if they are contaminated, procedures to address that contamination. The program gives the City the authority to either order, or directly undertake, the investigation and cleanup of abandoned, underutilized Brownfield properties that are below the regulatory "radar screen" of federal, state, and local environmental oversight agencies.

According to the authors of SB 32, these sites are likely to be found in commercial and urban areas, where they have been abandoned or ignored because of real or perceived contamination by hazardous materials. It is estimated there may be as many as 50,000 to 100,000 such sites in California. Many of these sites are in low-income neighborhoods where they contribute to blight, poor environmental health, and crime. Children may also use these abandoned sites as playgrounds, and they may also provide a site for illegal dumping of trash and hazardous wastes.

DISCUSSION

There are three major elements that make up SB 32: 1) program implementation including identification of eligible properties, investigation, cleanup authority, and immunity; 2) statewide scientific and public evaluation of numerical screening levels; and 3) the Southern California Pilot Project and development of a "plain language" implementation guide. Each of these elements will be part of the comprehensive implementation plan for the Brownfields Restoration Program (Program).

The following discussion describes specific aspects of the Program that warrant further explanation as the Program is considered for implementation.

1. Program Implementation Cost Estimates

Staffing requirements and the fiscal impacts of implementing SB 32 will depend to a large extent, on the level of cooperation by eligible property owners or operators. The less cooperative the responsible parties are, the more involved the City will need to become, and the higher the cost to the City. Annual costs to implement the Program for 5 to 10 properties per year could range between \$50,000 if all property owner(s) are cooperative, to \$675,000, if the City must

perform all of the investigation and cleanup and seek reimbursement. Once the Program is implemented, the City likely will be faced with some property owners in each of the three scenarios described below. Participation in the pilot program, as discussed below, will help determine how cooperative eligible property owners are likely to be, which will provide valuable insight into the development of a more accurate budget estimate.

With the approval of the Manager's Recommendations, staff will return to this Committee within 180 days with a comprehensive implementation plan for consideration. This timeframe will allow participation in the pilot program, as well as development of an eligible list of properties, development of Program documents, and the beginning of public outreach. This timeframe would also allow consideration of the comprehensive implementation plan along with the FY 2004 budget process.

As discussed later in this report, the City will put in place cost recovery mechanisms. While total cost recovery from property owners is possible and some cost recovery is likely, it could be an involved and lengthy process spread over several fiscal years. For that reason, the annual budget estimates discussed below do not include recovered costs (see Attachment 2 – Budget Summary Estimates).

The following scenarios and estimates are annual costs based on the enrollment of 5 to 10 properties per year in the Program.

Scenario 1 – Cooperative Owner

Scenario 1 (Cooperative Owner) would require an estimated \$50,000 per year to implement the Program and can be accomplished with no consultant assistance. In this scenario, eligible property owners are cooperative throughout the entire process from notice to provide information on the use of hazardous materials on the property, to the ultimate cleanup of the property, payment of environmental oversight agency costs, and determination that no further action is required. City staff costs will cover the costs required to develop the list of eligible properties, develop program documents, evaluate environmental assessment documents, conduct public education and outreach, and administer the Program. Additional details of these Program elements are discussed below and in Attachment 1.

Scenario 2 – Reluctant Owner

Scenario 2 (Reluctant Owner) would require an estimated \$150,000 per year to implement the Program including City staff costs of \$60,000, environmental consultant costs of \$40,000, and environmental oversight agency costs of \$50,000. In this scenario, eligible property owners might be somewhat reluctant and require an incentive (threat of fines or civil penalties) or assistance in complying with the requirements of the program. Some consultant services and environmental oversight agency costs are budgeted in this scenario to start the process with the expectation that staff would be able to work with the reluctant owner to gain their cooperation. Once cooperation has been gained, the property owner would then be expected to reimburse the City for our costs.

Scenario 3 – Non-cooperative Owner

Scenario 3 (Non-cooperative Owner) would require an estimated \$675,000 per year to implement the Program including City staff costs of \$75,000, environmental consultant costs of \$400,000, and environmental oversight agency costs of \$200,000. In this scenario the owner is assumed to be non-cooperative and the City would bear the costs for implementing all of the Program elements. Costs for this scenario would be recovered through litigation or other mechanisms which may be available such as grants, loans, or through the participation of developers or financial institutions.

The regulatory agency oversight will require extensive involvement of a state regulatory agency and may range from \$8,000 to \$100,000 or more per case depending on the nature and extent of contamination. If approved for environmental oversight, a local agency's cost will be considerably less, from several hundred dollars to perhaps up to several thousand dollars. Regulatory oversight costs are included in the above estimates and in Attachment 1.

2. Adoption of Implementing Ordinance

Adoption of the draft implementing ordinance would allow the City to compel or directly undertake the investigation and cleanup of eligible Brownfield properties (see Attachment 3 – Draft Ordinance to Implement SB 32). The ordinance could also be used to direct eligible property owners into the pilot study described below.

At an early stage, the City would be required to enter into an agreement for oversight and cost reimbursement with the State-designated oversight agency for a selected property. The ordinance provides for criminal, civil, and administrative remedies for non-compliance. A City-managed cleanup action would require approval of a majority vote of the City Council. SB 32 provides limited immunity to the City should it undertake the cleanup. SB 32 also provides that the City may recover from the property owner/operator its reasonable and necessary costs of investigation, cleanup, and environmental oversight.

3. Southern California Pilot Project

The Cal/EPA is conducting a pilot study to evaluate the usefulness of screening numbers in encouraging remediation at contaminated properties in the study area. Screening numbers are concentrations of chemicals of concern in soil that approximate cleanup levels. These numbers are advisory, with no regulatory effect, and cannot be used as cleanup levels or 'no further action' levels for contaminated sites.

Twenty-five selected sites in six Southern California counties are eligible for inclusion in the pilot project. The study will examine whether screening numbers are an adequate basis for determining the effort necessary to remediate contaminated properties. Properties that are eligible for cleanup under SB 32 can apply to participate in the study.

The benefit of participating in the pilot study is that the City and the owner(s) of eligible properties will receive assistance from the state agencies involved in the implementation of SB 32 with some of the oversight costs potentially waived. The involved state agencies will be learning, as the City learns, how best to implement this important program. Additionally, by participating in the pilot, the City will gain valuable experience as to how cooperative eligible property owners will be. The level of cooperation received during the pilot project will assist in developing more accurate budget estimates for the Program.

The study is being conducted from March 2002 until March 2004. The first step in participating in this pilot project is to identify potential sites willing to complete the application and take part in the project. If volunteers are not identified, the City could potentially use its authority under the implementing ordinance to require participation. Tasks required to complete the pilot, and estimated costs, will be consistent with the tasks and costs needed to implement the Program as discussed above under Scenario 1 and in Attachment 1.

4. Identification of Target Areas for Eligible Property List

Eligible properties for the Brownfields Restoration Program will be compiled utilizing available resources. Potential properties will be identified from the County Assessors list of unimproved land, the Neighborhood Code Compliance list of Vacant and Abandoned Properties, and regulatory databases such as, Permitted Hazardous Materials Facilities. In addition, input will be solicited from community planning groups, redevelopment agencies, and other interested parties.

5. Identification and Cleanup of Environmental Contamination

Identification of eligible properties will be accomplished by utilizing the steps described above. Notices will be sent out to owners and operators of property that constitute the eligible list requesting information on the past uses of the property. If hazardous materials were or are used on site, a determination will be made to see if any releases of hazardous materials have occurred. Owners of potentially contaminated properties will be sent notices requiring them to perform Phase I environmental assessments. If the Phase I reports indicate the need for additional investigation and the environmental oversight agency review concurs, the owner or operator will be notified that a Preliminary Endangerment Assessment (PEA) must be performed. The PEA investigation involves scoping the project, collecting and reviewing background information and chemical data, assessing community concern, and evaluating potential risks to public health and the environment. Remedial action will be required to cleanup the contamination to acceptable levels if the PEA describes hazardous material contamination that may have negative impacts. For properties which are not significantly contaminated (e.g., have limited and known quantities of contaminated soils and no impacts to groundwater), Phase I and PEA reports can provide a reliable basis for estimating probable cleanup requirements and costs.

6. Outreach and Public Participation

Involvement of the public is a very important component of the Program. A goal of the Program is to address the concerns of the community by not only stimulating development of

environmentally impacted property, but to also eliminate conditions that are hazardous to the public health and safety. We hope to elevate the quality of life and sense of community by encouraging the participation of the public and enabling them to become proactive partners in the Program.

An initial step for the City in implementing the Program would be to compile an eligible properties list. This list will be developed by researching available databases, as described above, but a high priority will be based on community input. Involvement of community-based organizations will be solicited and actively pursued by participating in community planning group meetings. Community fact sheets will be assembled, translated as necessary, and distributed. The Environmental Health Coalition, the MAAC Project, County of San Diego Department of Environmental Health, and the California Center for Land Restoration are already supportive of this Program.

If the City proposes to carry out a cleanup of an eligible property, this action must be approved by the City Council, and the City must notify the property owner or operator and the community prior to taking such action. Community notification includes the sending out of a fact sheet to property owners or occupants within 500 feet of the affected property's boundary and all other interested parties. A notice must be published in a local newspaper, as well as be posted on the property. Following the date of the notice, there will be public review period for 45 days regarding the adequacy of the site investigation and remedial action prepared for the property, followed by a 30-day comment period. Any interested party may provide written comments and the City shall respond in writing, including any response provided by the oversight agency. The City must also hold a community meeting to gather public comments during the public comment period.

Following the cleanup, if the oversight agency proposes to make a determination that any 'no further action' will be conditioned on a prohibition of future uses, a public notice and comment process with recordation of the conditions or restrictions on the deed to the property is required.

SB 32 requires Cal/EPA to establish numerical soil "screening values" for dozens of pollutants, after concluding a peer review of the numerical soil screening levels established by the San Francisco Bay Area Regional Water Quality Control Board (RWQCB). Separate soil screening values must be established for future unrestricted (residential) and restricted (commercial or industrial) land uses. Cal/EPA is required to complete two public participation processes (the first on methodology, and the second on the proposed screening values), and then adopt final numerical screening values on or before December 31, 2004. Cal/EPA will prepare a document that explains what screening numbers are and what the relationship of screening numbers are to regulatory cleanup levels. This will help to assess whether the pilot screening numbers were more or less stringent than the required regulatory cleanup levels.

Lastly, SB 32 requires Cal/EPA, by January 1, 2003, to publish a "plain language" informational document to assist citizen groups, community-based organizations, and other interested parties in navigating California's complex, multi-agency Brownfields regulatory process.

7. Cost Recovery

Although it is probable that many of the abandoned or underutilized SB 32 properties will not have "deep pocket" current owners, some will, and others will have financially solvent former owners or occupants who may be liable for environmental investigation and cleanup costs because they caused or contributed to pollution conditions.

SB 32 adopts all of the many cost recovery tools included in the 1990 Polanco Redevelopment Act (H&SC section 33459 *et seq.*) which granted similar property cleanup powers to local redevelopment agencies, and provides local agencies with express statutory authority to recover reasonable and necessary costs incurred by those agencies in implementing SB 32 requirements. SB 32 also expressly provides local agencies with the same legal rights to cost recovery that are provided under state and federal laws to environmental oversight agencies, and expressly limits the defenses available to defendants in such cost recovery lawsuits.

A cost recovery lawsuit must be commenced within three years after the completion of the cleanup of the property, providing the local agency with time to evaluate and pursue prudent claims against financially solvent liable parties and related parties such as insurers. Local agencies wanting to potentially pursue a cost recovery claim must also comply with additional procedural requirements under SB 32.

8. Liability Issues – Limited Immunity

SB 32 expressly provides that, except for oversight costs, a City that exercises its authority under SB 32 to either undertake the investigation and cleanup of a property or to require an owner/operator to do so, incurs no liability under state law for the mere exercise of that authority. In other words, the City is not liable for costs incurred by the property owner or operator to investigate or remediate, nor for compensation to others for the effects of the contamination or for other environmental conditions on the property merely because it has exercised its regulatory authority under SB 32. The only exception is that the City is required to reimburse the owner for the reasonable cost of completing a Phase I report for property that is found to be clean.

In addition, if the City undertakes the investigation and cleanup of a property, SB 32 provides for limited immunity from environmental liability. Essentially, if the City undertakes and completes an approved site investigation and cleanup action and receives a written determination of completion from the oversight agency, then the City is automatically immune from liability under any state or local law for any hazardous material release that is addressed and identified in the plan. Basically, this immunity protects the City from being ordered by a state or local agency to do additional environmental investigation and clean-up.

Moreover, unless they are responsible parties, SB 32 immunity also protects owners, tenants and their lenders who occupy the property after the cleanup has been completed and the written notice of determination has been furnished. The statute is ambiguous as to whether a responsible party who enters into a cooperative agreement to cleanup a site will benefit from the immunity

provisions. No case law exists on this issue.

It is important to note that SB 32 immunity has specific exceptions. Most importantly, it does not preclude the U.S. EPA from requiring further environmental work under federal law. Moreover, it does not preclude private parties from filing lawsuits against the City or other protected parties for personal injury, property damage, wrongful death or other causes of action.

Finally, immunity will be lost under any of the following circumstances: (1) another hazardous material release, not covered by the action plan, is discovered on the property; (2) any restrictions or conditions placed on the property are violated; (3) subsequent monitoring, testing, or analysis indicates the clean-up objectives were not achieved or are not being maintained; (4) required site maintenance activities are not adequately funded or properly carried out; (5) new or materially different facts surface which require further investigation and remedial action to prevent a significant risk to human health or the environment; or (6) fraudulent, negligent or intentional nondisclosure or misrepresentation of information is discovered.

9. Statewide Efforts Regarding SB 32 Implementation

The City of Los Angeles also is in the process of evaluating SB 32 and drafting a model ordinance. The City has formed an SB 32 working group consisting of representatives from various departments, which has been directed to make recommendations regarding designating a lead department, establishing the program, drafting a work plan, identifying eligible sites, and identifying legal issues and fiscal impact. The Los Angeles City Attorney's Office has been directed to assist in drafting an implementing ordinance. To date, a draft ordinance has not been produced.

The City of Oakland also reviewed SB 32, but has little motivation to implement it, primarily because most of the eligible properties in Oakland are already within redevelopment areas which are dealt with under the Polanco Act.

The Office of County Counsel for the County of San Diego intends to review the legislation. However, to date, they have not received any direction to move forward on it. Finally, the Cities of Palo Alto, Stockton, and Hayward just recently have requested information on SB 32, including copies of the model ordinance and guideline, for review.

We will continue to monitor statewide efforts and provide an updated report on the efforts of other jurisdictions considering implementing SB 32.

CONCLUSION

By accepting the Manager's recommendations, San Diego will be taking an important step to help eliminate Brownfields or environmentally contaminated properties within our communities. By participating in the Pilot Brownfields Project, the City will gain valuable experience and information regarding the implementation of the proposed Brownfields Restoration Program, while continuing to develop a more comprehensive implementation plan.

ALTERNATIVES

1. Do not proceed with the Pilot Brownfields Program. This would not allow the City to gain valuable experience and information regarding the implementation of this Program.
2. Do not proceed with the development of a citywide Brownfields Restoration Program until the Pilot Brownfields Project is completed. This would delay the development of the program until after March 2004.
3. Do not adopt an ordinance to implement the Brownfields Restoration Program. Without this statute, the City would not be able to implement the Brownfields Restoration Program to ensure that eligible contaminated properties are cleaned up.

Respectfully Submitted,

Richard L. Hays
Environmental Services Director

Approved: George I. Loveland
Senior Deputy City Manager

HAYS/CG

- Attachments:
1. Program Elements for SB 32 Implementation
 2. Budget Summary Estimates
 3. Draft Ordinance to Implement SB 32

Program Elements for SB 32 Implementation

The following describes the elements required for the City's implementation of SB 32.

1. Require the Investigation and Cleanup of Abandoned and Underutilized Brownfield Properties

There are three prerequisites to implementing this new statutory authority.

a. Adopt an implementing ordinance.

The City Council must authorize implementation of SB 32 by ordinance. The ordinance must:

- ☞ designate a City department, office, or agency as the Alocal agency @ responsible for implementing SB 32 requirements,
- ☞ describe the geographic boundaries within which the ordinance applies,
- ☞ authorize the Alocal agency @ to execute cost reimbursement and oversight agreements with designated oversight agencies for particular properties,
- ☞ specify penalties for non-compliance with the requirements of SB 32, and
- ☞ require approval of the City Council before the Alocal agency @ directly undertakes a cleanup action.

b. Confirm eligibility of selected Brownfield property.

SB 32 was written to enhance community efforts to require the restoration of smaller (5 acres or less) abandoned and underutilized Brownfield properties. The property must also have had some history of prior chemical handling usage, or other reasonable basis for suspecting that the property may be contaminated. SB 32 excludes properties that are,

- ☞ already subject to environmental oversight or cleanup under other applicable laws,
- ☞ currently in productive use for residential, commercial, or agricultural purposes,
- ☞ already in a redevelopment area,
- ☞ government owned, or
- ☞ owned by an operating industrial or commercial enterprise, which is already the subject of continuing expansion and improvement.

c. Select environmental oversight agency to assure adequacy of site investigation (assessment) and cleanup.

SB 32 requires the City to work with an environmental oversight agency to assure that participating SB 32 properties are properly investigated and cleaned up. Guidelines have been developed to assist with this process.

2. Obtain Information About Known Contamination Conditions

SB 32 allows the City to issue a notice requiring an owner or tenant of an eligible Brownfield property to provide the City with information that may be relevant to determining if a hazardous materials release may be present on a property. This material must be submitted to the City within 30 calendar days following receipt of the notice.

The City may conclude, based on the information provided, that the property is, or may be, affected by a hazardous materials release. The City may then issue a second notice to the owner or tenant, compelling preparation of a Phase I environmental assessment report of the property to determine if a hazardous materials release has occurred. The Phase I report must be submitted to the City within 60 days following receipt of this notice. The City must, in turn, provide the completed Phase I Report to the California Environmental Protection Agency (Cal/EPA) in connection with arranging for an environmental oversight agency.

3. Complete Property Assessment and Cleanup Activities and Secure Environmental Oversight Agency Approval

a. Role of Environmental Oversight Agency

SB 32 requires that the environmental oversight agency make all substantive decisions about the environmental conditions on the property, including the need for site testing and cleanup and the final approval of environmental conditions on the property. The City must enter into a cost reimbursement and oversight agreement with the environmental oversight agency. These environmental oversight agency costs may be voluntarily assumed by a cooperating owner or prospective purchaser, or they may be reimbursed from non-cooperating owners and other responsible parties in a successful cost recovery lawsuit.

b. Environmental Oversight Agency Review of Phase I report.

SB 32 requires that an environmental oversight agency complete its review of the Phase I report within 45 days, and notify the City of its determination that the Phase I report either confirms that there is no pollution at the property, or that a Preliminary Endangerment Assessment (PEA) should be prepared.

c. Properties receiving environmental clearance based on Phase I report.

If the environmental oversight agency concludes that no property pollution is present, the environmental oversight agency is required to issue a 'No Further Action' (NFA) determination for the property. The City is also required to reimburse the owner for the reasonable cost of completing a Phase I report for such clean property.

d. Properties requiring site testing and risk evaluation based on Phase I report.

If the Phase I report indicates that there is or may be pollution on the property and preparation of a

PEA is warranted, or if the environmental oversight agency reaches this conclusion based on its review of the Phase I report, then the City may issue a third notice requiring the current owner or tenant to prepare a PEA within 120 days following receipt of this notice.

e. Environmental oversight agency review of PEA.

The environmental oversight agency must review the PEA report for the adequacy of the site data and the acceptability of the recommendation.

(1) ‘No Further Action’ determination.

If the PEA determines, and the environmental oversight agency concurs, that (1) no pollution conditions exist on the property, or (2) the condition of the property allows for safe use, an NFA letter may be issued. The NFA letter may contain restriction or conditions on future uses of the property. Approval of an NFA determination with restriction or conditions requires a public notice and comment process and recordation of the conditions or restrictions. Such an NFA determination remains valid only to the extent the property is in compliance with the recorded conditions and restrictions.

(2) Additional site investigation and cleanup.

If the environmental oversight agency determines that the PEA demonstrates a need for further cleanup, either the City or the environmental oversight agency may send a fourth notice requiring a property owner to complete further site investigation and cleanup activities. Property owners have 90 days following receipt of such a notice to propose a plan for completing a site investigation and cleanup program, which includes a schedule for completion.

f. City’s options if property owner declines to cooperate.

The City has several options for responding to owners who decline to cooperate with SB 32 requirements.

If an owner/operator declines to prepare a Phase I or PEA report, the City must issue a notice of noncompliance to the owner and provide the owner with 14 days to complete the required report(s). If noncompliance continues past that date, the City may complete the report(s) and charge the non-cooperating owner the reasonable costs of preparing the report(s). Phase I and PEA Reports prepared by or on behalf of the City must be reviewed by the environmental oversight agency based on the same criteria for reports prepared by owners or tenants.

If an owner or tenant fails or refuses to complete a site investigation, the City may initiate a site investigation action 30 days after it notifies a property owner or tenant that this will occur. The notice must also state that the owner or tenant is strictly liable to, and will be billed by, the City for its reasonable costs in carrying out site investigation activities.

SB 32 mandates that a cleanup action may be initiated by the City only after a resolution has been adopted by a majority vote of the City Council approving the action, due to the potential

liability issues associated with cleanup program implementation. The property owner or tenant must receive a 30-day notice of the adoption of the resolution prior to the City's initiation of the cleanup program. The notice must also state that the owner or tenant is strictly liable to, and will be billed by, the City for its reasonable costs in carrying out the cleanup. Additional public notice and participation requirements are also triggered when the City proposes to complete a property cleanup program.

g. Environmental clearance for properties investigated and cleaned up pursuant to SB 32 requirements.

Properties that are investigated and cleaned up by or in cooperation with the City pursuant to SB 32 are entitled to receive a "written determination of completion" from the environmental oversight agency that triggers limited immunity (see discussion below). Approval of written determinations of completion with conditions or restrictions requires recordation of such requirements and financial assurances for any ongoing operational or maintenance activities. Such conditional determinations, and the immunities they trigger, are effective only while the property complies with the applicable conditions or restrictions.

Budget Summary Estimates

BROWNFIELDS RESTORATION PROGRAM / STAFFING NEEDS*				
	Staff	Consultants	Agency Oversight	Total
Cooperative: Scenario 1	\$50,000	\$0	\$0	\$50,000
Reluctant: Scenario 2	\$60,000	\$40,000	\$50,000	\$150,000
Non-Cooperative: Scenario 3	\$75,000	\$400,000	\$200,000	\$675,000

*Note: Estimates are annual costs based on the enrollment of 5 to 10 eligible properties per year

Draft 6/26/02

(O-2002-_____)

ORDINANCE NUMBER O- _____ (NEW SERIES)

ADOPTED ON _____

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.”

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 Number _____ and its accompanying oral and documentary evidence regarding the Brownfield Restoration Program as presented before the Public Safety & Neighborhood Services Committee on _____; 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) *Hazardous material* found on, in or under *Property* within the City 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 _____ 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
Date:
Dept:ESD

O-2002-