

44



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

915 I STREET
CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 449-5428

LORRAINE MAGANA
CITY CLERK

November 23, 1982

City Council
Sacramento, CA 95814

MEMBERS IN SESSION:

SUBJECT: Hazardous Materials Disclosure Ordinance

APPROVED
BY THE CITY COUNCIL

NOV 23 1982

OFFICE OF THE
CITY CLERK

SUMMARY

This item is presented at this time for approval of publication of title pursuant to City Charter, Section 38.

BACKGROUND

The attached ordinance requiring disclosure of hazardous materials was heard by the Law and Legislation Committee on October 28th and November 8th and is recommended for adoption. Three committee members voted in favor of the attached ordinance. Councilmember Pope favored the ordinance, except for the provision (§ 71.180) regarding trade secrets.

RECOMMENDATION

It is recommended that the item be passed for publication of title and continued on November 30, 1982.

Respectfully submitted,

LM
Lorraine Magana
City Clerk

PASSED FOR
PUBLICATION
& CONTINUED
TO 11-30-82

RECOMMENDATION APPROVED:

Walter J. Slife
City Manager

November 23, 1982
All Districts

44

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF

AN ORDINANCE ADDING CHAPTER 71 TO THE
SACRAMENTO CITY CODE RELATING TO
HAZARDOUS MATERIALS DISCLOSURE

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

SECTION 1.

Chapter 71 is hereby added to the Sacramento City Code to read as follows:

Chapter 71 Hazardous Materials Disclosure

Sec. 71.100 Findings and Purpose. The City Council finds and declares:

(a) Hazardous substances and hazardous wastes present in the community may pose acute and chronic health hazards to individuals who live and work in this City, and who are exposed to such substances as a result of fires, spills, industrial accidents, or other types of releases or emissions.

(b) The people who live and work in this City have a right and need to know of the use and potential hazards of hazardous materials in the community in order to plan for and respond to potential exposure to such materials.

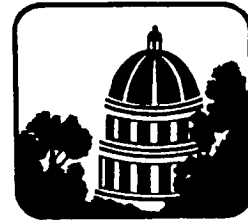
(c) Basic information on the location, type, and the health risks of hazardous materials uses, stored, or disposed of in the City is not now available to firefighters, health officials, planners, elected officials, and residents.

(d) It is the intent of the City Council that this chapter recognize the community's right and need for basic information on the use and disposal of hazardous materials in the City and that it establish an orderly system for the provision of such information.

(e) It is further the intent of the City Council that the system of disclosure set forth in this chapter shall provide the information essential to firefighters, health officials, planners, elected officials and residents in meeting their responsibilities for the health and welfare of the community in such a way that the statutory privilege of trade secrecy is not abridged.

Sec. 71.110 Definitions. For the purpose of this chapter, the terms listed in this section shall be defined as follows:

SACRAMENTO COUNTY HEALTH COUNCIL



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1820 J Street
Sacramento,
California 95814
916/447-7063

Staff Services Provided by: The Community Services Planning Council, Inc.

November 29, 1982

Mayor Philip Isenberg
City Council Office
City Hall
915 I Street
Sacramento, CA 95814

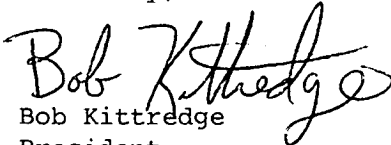
Dear Mayor Isenberg:

The Sacramento County Health Council has reviewed the County Health Department's proposed draft of a county hazardous materials right-to-know ordinance as well as the City of Sacramento's proposed ordinance. The Health Council has endorsed the concept of the hazardous materials right-to-know ordinance.

The city's draft ordinance applies to any person or business using more than 500 pounds or 55 gallons of hazardous materials a month. The Health Council believes that changing the ordinance to reflect 500 pounds or 55 gallons a year more accurately reflects our concerns about health hazards without undo restrictions upon the business community. We urge your Council's adoption of the annual amount.

In the event that the City Council adopts the monthly totals in its ordinance, the Health Council will recommend to the Board of Supervisors that the county ordinance use those same totals. To avoid confusion and extra expense, it is important that both ordinances contain similar provisions.

Sincerely,


Bob Kittredge
President

BK/JB/kg

cc: Members, City Council
City Clerk
Ted Kobey, Deputy City Attorney
Brian Richter, County Executive
Lee Elam, County Counsel
Ronald Usher, Director, County Health Department



League of Women Voters of Sacramento

TESTIMONY PRESENTED NOVEMBER 30, 1982

SACRAMENTO CITY COUNCIL

RE: HAZARDOUS MATERIALS DISCLOSURE ORDINANCE

My name is Lois Woodruff, President of the League of Women Voters of Sacramento. Earlier this month I addressed the Council's Law and Legislation Committee, representing a large number of community organizations and concerned citizens. Tonight again, I am speaking for these organizations and citizens (which I will name when I have concluded) in expressing our support for the Hazardous Materials Disclosure Ordinance before you.

Given the increased use of toxic and hazardous materials, it is imperative that firefighters, planners, public and health officials be informed about where these materials are handled, stored, processed, and released. We encourage you to adopt this ordinance tonight and in so doing, heed the recommendation of the Law and Legislation Committee, which on November 8 voted unanimously in favor of the ordinance.

The current, final draft of the ordinance is a good one. Major strengths include:

- It is properly targeted for the large quantity user.
- It calls for an adequate listing of hazardous materials, and flexibility is built into it so that the Fire Department can add materials to the list when necessary.
- The prescribed disclosure form is straightforward and easily prepared; and the form is carefully constructed to exclude legitimate trade secrets.
- Physicians are allowed access to information disclosed when needed to treat patients.
- The information disclosed will be accessible to city officials and concerned members of the public.

We believe the ordinance could be further strengthened by two amendments clarifying the threshold for disclosure:

- (1) We would strongly recommend a zero threshold for disclosure of any substance identified as causing cancer or birth defects;
- (2) We would like to see the threshold for reporting lowered from use or handling of 55 gallons or 500 pounds per month to those same amounts per year.

A year reporting period would ensure disclosure for the majority of hazardous materials in Sacramento; it would also coincide with most businesses' inventory schedules. And, as indicated in Chief Powell's memo of November 23, the more persons and businesses disclosing, the lower the per unit cost to users. We would point out that Sacramento County is inclined to adopt a year reporting period, and the Sacramento County Health Council has indicated its preference for a year period as well.

Finally, while we recognize the business community's concern over release of trade secrets as a result of disclosure requirements, we do not think trade secrecy is a major issue in this case. As I mentioned earlier, the form relied on for disclosure has been constructed specifically to exclude trade secrets. Other persons here tonight are prepared to discuss this matter in greater detail.

In closing, I and the organizations I represent would urge you to vote tonight in favor of the Hazardous Materials Disclosure Ordinance. It is important that you act now. In so doing you will set a precedent for the County of Sacramento when it begins hearing a similar ordinance in the near future. Furthermore, in passing the ordinance you will make a fitting close to an adequate period of public review and official deliberation begun last April by Councilman Connelly.

The following organizations join with me in supporting the Hazardous Materials Disclosure Ordinance:

American Lung Association of Sacramento, Immigrant Trails
Sacramento Area Fire Fighters, Local 522
Sacramento Central Labor Council, AFL-CIO
Fruitridge Democratic Club
Greenpeace Pacific Southwest
California Agrarian Action Project
Sierra Club, Sacramento Valley/Sierra Group
Audobon Society of Sacramento
Communication Workers of America, Local 9421
California League of Conservation Voters
La Raza Health Alliance
Sacramento Public Employees Council
United Public Assistance Workers
Friends of the Earth
Friends of the River
Sacramento Gray Panthers
Lutheran Church in America
Citizens for Safe Energy
California Air Quality Testing
Citizens Against the PCB Burn
Citizens for Safe Energy

Thank-you.

ORDINANCE NO. 82-097

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF

NOV 30 1982

AN ORDINANCE ADDING CHAPTER 71 TO THE
SACRAMENTO CITY CODE RELATING TO
HAZARDOUS MATERIALS DISCLOSURE

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

SECTION 1.

Chapter 71 is hereby added to the Sacramento City Code to read as follows:

Chapter 71 Hazardous Materials Disclosure

Sec. 71.100 Findings and Purpose. The City Council finds and declares:

(a) Hazardous substances and hazardous wastes present in the community may pose acute and chronic health hazards to individuals who live and work in this City, and who are exposed to such substances as a result of fires, spills, industrial accidents, or other types of releases or emissions.

(b) The people who live and work in this City have a right and need to know of the use and potential hazards of hazardous materials in the community in order to plan for and respond to potential exposure to such materials.

(c) Basic information on the location, type, and the health risks of hazardous materials uses, stored, or disposed of in the City is not now available to firefighters, health officials, planners, elected officials, and residents.

(d) It is the intent of the City Council that this chapter recognize the community's right and need for basic information on the use and disposal of hazardous materials in the City and that it establish an orderly system for the provision of such information.

(e) It is further the intent of the City Council that the system of disclosure set forth in this chapter shall provide the information essential to firefighters, health officials, planners, elected officials and residents in meeting their responsibilities for the health and welfare of the community in such a way that the statutory privilege of trade secrecy is not abridged.

Sec. 71.110 Definitions. For the purpose of this chapter, the terms listed in this section shall be defined as follows:

ORDINANCE No. 82-097
NOV 30 1982

(a) "CAS number" means the unique identification number assigned by the Chemical Abstracts Service to specific chemical substances.

(b) "Chemical name" means the scientific designation of a substance in accordance with the International Union of Pure and Applied Chemistry or the system developed by the Chemical Abstracts Service.

(c) "Common name" means any designation or identification such as code name, code number, trade name, or brand name used to identify a substance other than by its chemical name.

(d) "Disclosure form" means the written request for information prepared pursuant to Section 71.140.

(e) "EPA Waste Stream Code" means the identification number assigned pursuant to the regulations of the U. S. Environmental Protection Agency to specific types of hazardous waste.

(f) "Hazardous material" means any hazardous substance or hazardous waste as defined in subdivisions (g) or (h) in this section, or any material designated pursuant to Section 71.120.

(g) "Hazardous substance" means any substance or product:

(1) for which the manufacturer or producer is required to prepare a MSDS for the substance or product pursuant to the Hazardous Substances Information and Training Act (commencing with Section 6360, Chapter 2.5, Part 1 of Division 5 of the California Labor Code) or pursuant to any applicable federal law or regulation;

(2) which is listed as a radioactive material set forth in Chapter 1, Title 10, Appendix B, maintained and updated by the Nuclear Regulatory Commission.

(h) "Hazardous waste" means hazardous or extremely hazardous waste as defined by Sections 25115 and 25117 of the California Health and Safety Code and set forth in Sections 66680 and 66685 of Title 22 of the California Administrative Code.

(i) "Handle" means to generate, treat, store or dispose of a hazardous waste in any fashion.

(j) "MSDS" means a Material Safety Data Sheet prepared pursuant to Section 6390 of the California Labor Code or pursuant to the regulations of the Occupational Safety and Health Administration of the United States Department of Labor.

(k) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, association, city, county, district and the state, or any department or agency thereof.

(l) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment.

(m) "SIC code" means the identification number assigned by the Standard Industrial Classification code to specific types of businesses.

(n) "Use" includes the handling, processing or storage of a hazardous substance.

(o) "User" means any person who uses a hazardous substance or handles a hazardous waste.

(p) "Physician" means any person who holds a valid certificate from the State of California to practice the healing arts.

(q) "Carcinogen" refers to a substance or agency which causes cancer. For purposes of this ordinance, carcinogens are those substances specified on the list developed by the United States Department of Health and Human Services on its Second Annual Report on Carcinogens.

Sec. 71.120 Designation of a Hazardous Material.

(a) A material may be added to the list of hazardous materials set forth in Sec. 71.110 upon a finding by the Fire Department that it satisfies the following criteria: The material, because of its quantity, concentration or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the community.

(b) A material added to the list of hazardous materials pursuant to subdivision (a) shall be designated as either a hazardous substance or hazardous waste by the Fire Department.

Sec. 71.130 Filing of a Hazardous Material Disclosure Form.

(a) Any person who uses or handles a hazardous material must annually submit a completed disclosure form to the Revenue and Collections Division with the annual renewal of the business operation tax certification pursuant to Chapter 23 of the Sacramento City Code. The Fire Department may specify in writing such other time for the submittal of the form as it deems appropriate in individual cases.

(b) A person not required to obtain a business operations tax certificate who uses or handles a hazardous substance shall submit a completed disclosure form by September 1 of each year.

(c) Within 15 days of any:

- (1) new use or significant change in the use or handling of a hazardous material;
- (2) new use or handling of a previously undisclosed hazardous material;
- (3) change of business address;
- (4) change of business ownership; or
- (5) change of business name;

the user shall submit a disclosure form detailing the new use or handling or other appropriate information.

Sec. 71.131 Administrative Procedure; Disclosure of Information.

(a) Upon receipt of a disclosure form, the Revenue and Collection Division shall ensure that the name and address on the form are correct and shall forward the disclosure form to the Fire Department.

(b) The Fire Department shall maintain files of all disclosure forms received. Subject to the provision of Sec. 71.180 relating to trade secrets, these files shall be open to the public during normal business hours. The disclosure forms shall be filed by street address and parcel number and cross-referenced by the SIC #(s) and the CAS #(s) or EPA waste stream codes listed on the disclosure form.

(c) The Fire Department shall keep a record of all persons who request access to the hazardous materials disclosure forms. The record shall include:

- (1) The person's name, address and telephone number;
- (2) Name and address of the person, business or governmental agency such person represents; and,
- (3) Identity of the specific file(s) examined or requested to be copied.

Sec. 71.140 Content of the Disclosure Form.

(a) The disclosure form shall be prepared by the Fire Department with the assistance of the County Health Officer, the Planning Department, and other interested parties. The disclosure form shall include, but not be limited, requests for the following:

(1) A copy of the MSDS for every hazardous substance used by the person completing the disclosure form, provided, however, that no such copy need be provided for any hazardous substance for which the Fire Department has on file a copy of the MSDS.

(2) A listing of the chemical name, any common names, and the CAS number of every hazardous substance used by the person completing the disclosure form.

(3) The EPA waste stream code of every hazardous waste handled by the person completing the disclosure form.

(4) The maximum amount of each hazardous material disclosed in either subsection (2) or (3) which is handled or used at any one time by the user over the course of the year.

(5) Sufficient information on how and where the hazardous materials disclosed in subsections (2) and (3) are handled or used by the user to allow fire and safety personnel to prepare adequate emergency responses to potential releases of the hazardous materials.

(6) Sufficient information on any releases of the hazardous materials disclosed in subsections (2) and (3) into the air, water, sewers, or land to permit the City to understand the sources and content of hazardous material releases.

(7) The SIC code of the business, if applicable.

(8) The name and phone number of the person representing the business and able to assist emergency personnel in the event of an emergency involving the business during non-business hours.

(b) Upon request all users must provide information in addition to that required in the disclosure form filed pursuant to subsection (a) hereof as follows:

(1) to the Fire Department any information determined by the Fire Department to be necessary to protect the public health, safety or the environment; and

(2) to any physician where the physician determines that such information is necessary to the medical treatment of his or her patient.

Any additional information furnished under this subsection shall be subject to the trade secret provisions of Sec. 71.180.

Sec. 71.150 Exemptions from Disclosure.

The following materials, persons or entities shall be exempt from disclosure under this chapter:

(a) A material designated as a hazardous material by this chapter solely by its presence on the Nuclear Regulatory Commission list of radioactive materials shall be exempt from the requirement that a MSDS be submitted with the disclosure form.

(b) Hazardous substances contained in food, drug, cosmetic or tobacco products.

(c) Any person using or handling less than 500 pounds or 55 gallons a month, whichever is the lesser, of a hazardous material shall be exempted from the requirement of disclosure of that use or handling unless the Fire Department has provided notice that he or she has lowered the weight or volume limits of this exemption for a specific hazardous material in response to public health concerns.

The exemption of this subsection (c) shall not apply to the using or handling of carcinogens except to the extent that such carcinogens are handled or used solely for personal purposes.

(d) Hazardous substances contained solely in consumer products packaged for use by and distributed to the general public.

(e) Any person, while engaged in the transportation of hazardous materials, including storage directly incident thereto, provided that such materials are accompanied by shipping papers prepared in accordance with the provisions of 49 Code of Federal Regulations, subchapter c.

(f) No MSDS shall be required for any hazardous substance for which an MSDS is not available at the time disclosure is required under Sec. 71.130, provided, however, that such MSDS shall be submitted to the Fire Department within fifteen (15) days after receipt by the user of the MSDS. Nothing in this subsection (f) shall be deemed to exempt from disclosure the remaining information contained in Sec. 71.140.

(b) Information contained in this document is for the use of the general public.

(c)

Sec. 71.160 Fees.

The City Council shall establish a schedule of fees to be paid by persons using or handling hazardous materials which is sufficient to cover the costs to the City of administering this ordinance.

Sec. 71.170 Enforcement.

It shall be unlawful for any person to knowingly violate any provision of this chapter. In addition, any such violation shall be deemed a public nuisance, and the City Attorney is authorized to institute and maintain an action to enjoin such violation.

Sec. 71.180 Trade Secrets.

(a) If a user believes that a request for information made by either the disclosure form or otherwise pursuant to this chapter involves the release of a trade secret, the user shall so notify the Fire Department in writing. As used herein, trade secret shall have the meaning given to it by Section 6254.7 of the Government Code and Section 1060 of the Evidence Code.

(b) Subject to the provisions of this section, the Fire Department shall protect from disclosure any trade secret coming into its possession when requested to do so in writing by the user.

(c) Any information reported to or otherwise obtained by the City Fire Department, or any of its representatives or employees, which is exempt from disclosure pursuant to subdivision (b) shall not be disclosed to anyone except:

(1) to an officer or employee of the City, the State of California, or the United States of America, in connection with the official duties of such officer or employee under any law for the protection of health, or to contractors with the City and their employees if in the opinion of the Fire Chief, such disclosure is necessary and required for the satisfactory performance of a contract for performance of work; or

(2) to any physician where the physician determines that such information is necessary to the medical treatment of his or her patient.

(d) For the purposes of this section, fire and emergency response personnel and County Health personnel operating within the jurisdiction of the City shall be considered employees of the City.

(e) Any officer or employee of the City, or former officer or employee, who by virtue of such employment or official position has obtained possession of or has access to information, the disclosure of which is prohibited by this section, and who, knowing that disclosure of the information is prohibited, knowingly and willfully discloses the information in any manner to any person not entitled to receive it, shall be guilty of a misdemeanor. Any contractor with the City and any employee of such contractor, who has been furnished information as authorized by this section, shall be considered to be an employee of the City for purposes of this section. Any physician who has been furnished information or who has obtained information pursuant to subsection (b) of this section and who, knowing that the disclosure of the information is prohibited, knowingly and willfully discloses the information, shall be guilty of a misdemeanor.

... ..

(f) Information certified by appropriate officials of the United States, as necessarily kept secret for national defense purposes, shall be accorded the full protections against disclosure as specified by such official or in accordance with the laws of the United States.

(g) Upon receipt of a request for the release of information to the public which includes information which the user has notified the Fire Department is a trade secret pursuant to subdivision (a) of this section, the Fire Department shall notify the user in writing of said request by certified mail. The Fire Department shall release the information thirty (30) days after the day of mailing said notice, unless, prior to the expiration of said thirty (30) days, the user institutes an action in an appropriate court for a declaratory judgment that said information is subject to protection under subdivision (b) of this section and/or an injunction prohibiting disclosure of said information to the general public.

(h) The provisions of this section shall not permit a user to refuse to disclose information required pursuant to this chapter to the City Fire Department.

SECTION 2. Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 3. Effective Date.

This ordinance shall become effective one hundred eighty (180) days after its adoption.

PASSED FOR PUBLICATION: NOV 23 1982
ENACTED: NOV 30 1982
EFFECTIVE: MAY 29 1982

ATTEST: _____ MAYOR

CITY CLERK

ORDINANCE No. 82-097