

ORDINANCE NO. 5210

AN ORDINANCE AMENDING TITLE 7 OF THE ALBANY MUNICIPAL CODE BY ADDING CHAPTER 7.86, HAZARDOUS MATERIALS, DECLARING THE CONTAMINATION OF PREMISES IN THE CITY OF ALBANY WITH HAZARDOUS MATERIALS TO BE A NUISANCE, PRESCRIBING SUCH NUISANCE AS A MISDEMEANOR, ALLOWING THE CITY TO CLEAN UP SUCH NUISANCE AT THE EXPENSE OF THE OWNER OF THE PREMISES AND DECLARING AN EMERGENCY.

WHEREAS, the discharge of hazardous materials into the environment creates serious risk of injury to the members of the public and damage to public and private property and;

WHEREAS, hazardous material discharges onto private property, poses a significant risk of the spread of contamination beyond the boundaries of the premises on which the spill occurs and;

WHEREAS, the City of Albany in the exercise of its police powers, seeks to provide a mechanism for the prompt clean up of such hazardous discharges.

NOW THEREFORE, The people of the City of Albany do Ordain as follows:

Section 1. Title 7 of the Albany Municipal Code is amended by the addition of Chapter 7.86, Hazardous Materials, as follows:

**Chapter 7.86
Hazardous Materials**

Sections:

- 7.86.010 Definitions
- 7.86.020 Purpose
- 7.86.030 Nuisance Unlawful
- 7.86.040 City may abate nuisance
- 7.86.050 Right to enter
- 7.86.060 Interference with clean-up personnel prohibited
- 7.86.070 Declaration of public hazard
- 7.86.080 Costs of clean-up to become a lien

7.86.010. Definitions.

(1) Clean-up: Means any and all efforts undertaken for the remediation, containment, or mitigation of the contamination of premises.

(2) Contaminate: Means to discharge, spill, or cause to be present upon premises, hazardous material in such a state, or under such circumstances, that a reasonable risk exists that said hazardous material will come into direct physical contact with the natural environment or may spread to adjoining real property.

(3) **Hazardous Material:** Any substance designated or listed under (a) through (e) below, exposure to which results or may result in adverse affects on the health or safety of human beings;

(a) any substance defined under Section 101(14) of CERCLA,

(b) any biological agent or other disease causing agent as defined in 101(33) of CERCLA,

(c) any substance listed by the U.S. Department of Transportation and regulated as Hazardous Materials under 49 CFR 172.101 and appendices,

(d) hazardous waste,

(e) any material declared to be a hazardous substance by the City Council by separate resolution or ordinance.

(4) **Premises:** Any real property located within the City of Albany as well as any improvements located thereon which have been contaminated by hazardous material.

(5) **Premises Owner:** Any person, corporation, or legal entity which owns any interest in the premises in question. Premises owner also includes any person in charge of the premises.

(6) **Responsible Party:** Any person, corporation, or legal entity which in any manner whatsoever causes premises to be contaminated with hazardous material.

(7) **Stand-down Expense:** All expenses incurred by the City in the demobilization of equipment and personnel from a clean-up effort.

7.86.020. Contamination of premises with hazardous material declared a nuisance. The contamination of any premises in the City of Albany due to the presence thereon of hazardous materials is hereby declared to be a nuisance.

7.86.030. Nuisance Unlawful.

(1) No person, partnership, corporation, or other entity, shall cause any premises in the City of Albany, whether publicly or privately owned, to become contaminated with hazardous material.

(2) No person, corporation, or other entity, shall permit any premises owned or under its control to remain contaminated by the presence of hazardous materials.

(3) Violation of any of the provisions of AMC 7.88.030 shall be a misdemeanor punishable pursuant to the general penalty provided at AMC 1.04.010(1)(b)(ii).

7.86.040. City may abate nuisance.

(1) Unless a hazard to public safety has been declared by the City Manager or his/her designee, as hereinafter set forth, the City shall notify any owner or person in charge of any premises contaminated by hazardous material to remove or clean-up said contamination in a manner consistent with all applicable state, federal, and local laws and regulations. Notice shall be given by certified mail with a return receipt requested, addressed to the owner of the

premises as shown by the assessment records of the County in which the premises are located. In the event that the premises owner fails to initiate clean-up within 10 days of said notice and complete clean-up within 90 days of said notice, the City may undertake the clean-up of the hazardous material or may contract with a third party for such clean-up.

(2) In the event that the City elects to proceed with clean-up as provided in subsection (1) above, all costs incurred by the City shall be calculated and shall be the joint and several responsibility of the premises owner and the responsible party and will become a lien against the premises on which the hazardous material was located. In computing its costs, the State Fire Service Mobilization Plan (ORS 476.560) shall be used as a reference to establish the dollar rate for City personnel and equipment used in the clean-up of the hazardous material. Should the City contract with a third party for any of the clean-up, all costs thereby incurred shall be the joint and several responsibility of the owner of the premises and the responsible party. In addition to the actual out-of-pocket costs incurred by the City through the use of City personnel and equipment or the employment of third parties, the owner of the premises and the responsible party shall be jointly and severally liable for payment of all stand down expenses incurred by the City and shall further be responsible for an administrative fee of eighteen percent (18%) of the total clean-up costs to defray the City's expense in administering the clean-up program.

(3) Under no circumstances shall this Chapter obligate the City to undertake clean-up of hazardous material. All provisions in this Chapter which empower or authorize City action, shall be permissive and not mandatory. The City and its officers and employees shall be entitled to exercise discretion in determining the extent to which contamination of premises with hazardous materials warrants a City response. Such considerations may include the apparent danger to public health, the likely spread of contamination, financial resources available to the City for initiation of clean-up, other demands on City staff or financial resources, the likelihood that the costs of clean-up can be recovered from the owner of the premises or the responsible party, and the nature of the hazardous materials. This enumeration is not exclusive and is intended only to illustrate the types of discretionary criteria the City may employ in determining whether or not a particular hazardous material discharge warrants a City response.

7.86.050. Right to enter.

In the event it becomes necessary or desirable for the City to clean-up any hazardous contamination, pursuant to this ordinance, any and all employees of the City engaged in said remediation effort shall have unrestricted access to the contaminated premises, at all time. Should the City contract with a third party for all or any part of the clean-up, all agents and employees of said contractor shall have unrestricted access to the premises.

7.86.060. Interference with clean-up personnel prohibited.

No person shall interfere with or deny access to any person authorized to enter contaminated premises for the purposes of clean-up as provided by AMC 7.88.040.

7.86.070. Declaration of public hazard.

In the event that the City Manager or his/her designee determines, in the exercise of reasonable discretion, that the contamination of hazardous materials on premises within the

City of Albany constitutes an immediate hazard to public safety or danger to adjoining premises, the City may dispense with a notice provision required in AMC 7.88.040(1) and proceed forthwith to clean-up of the hazardous material at the expense of the owner of the premises and the responsible party.

7.86.080. Costs of clean-up to become a lien.

Upon completion of the clean-up all costs and administrative fees associated therewith shall be billed to the owner of the premises and/or the responsible party, if known, and in the event said costs are not paid within thirty (30) days, the City shall file with the City Recorder and thereafter present to the City Council, an itemized statement of the costs incurred. The Council shall, thereafter, provide an opportunity for a public hearing concerning the reasonableness of the costs incurred and shall thereafter, by ordinance, determine the reasonableness of the cost which shall then become an obligation owed to the City by the owner of the premises, and the City shall have a lien upon the premises for said sum and the lien shall be entered in the lien docket and enforced against the premises in the manner provided for the enforcement of City liens.

Section 2. Emergency Declared:

IT IS HEREBY adjudged and declared that this Ordinance is necessary for the immediate preservation of the public peace, health and safety of the City of Albany, and an emergency is hereby declared to exist, and this Ordinance shall take effect and be in full force and effect when signed by the Mayor.

DATED this 25th day of October, 1995.

PASSED BY THE COUNCIL: October 25, 1995

APPROVED BY THE MAYOR: October 25, 1995

EFFECTIVE DATE: October 25, 1995



Mayor

ATTEST:



Deputy City Recorder