

ORDINANCE NO. 4963

AN ORDINANCE CREATING ALBANY MUNICIPAL CODE CHAPTER 9.14 CONCERNING THE REMEDIATION OF CONTAMINATED SOIL AND DECLARING AN EMERGENCY.

The City Council of the City of Albany finds that:

1. Leaking storage tanks, and poor storage and disposal practices have resulted in the presence of contaminated soils within the city of Albany.

2. In addition to the presence of soils that were contaminated within the city limits, soils contaminated elsewhere are sometimes brought into the City of Albany for clean-up or remediation.

3. When contaminated soils are discovered within the city of Albany, clean-up, or remediation, is called for. Such remediation must be accomplished in accordance with accepted environmental standards developed by the State of Oregon and the federal government.

4. The City of Albany has a role in monitoring remediation practices and in establishing additional requirements, over and above those minimums established by state and federal regulations as necessary to protect the Albany environment.

5. This ordinance is adopted to address the findings set forth above, now therefore,

THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1. Albany Municipal Code Chapter 9.14; Remediation of Contaminated Soils, is hereby created as follows:

Chapter 9.14

REMEDICATION OF CONTAMINATED SOIL

Sections:

- 9.14.010 Permit required.
- 9.14.020 Permit application.
- 9.14.030 Permit fee.
- 9.14.040 Remediation standards.
- 9.14.050 Variance from minimum remediation standards.
- 9.14.060 Appeals process.
- 9.14.070 Penalty.

9.14.010 Permit required. It shall be unlawful to clean or remediate contaminated soil within the city of Albany without having first obtained a permit to do so from the Chief of the Fire Department of the City of Albany or his or her designee. Soil shall be deemed contaminated for purposes of this section if the cleaning or remediation of said soil is mandated by any state or federal law, rule, or regulation.

9.14.020 Permit application. An application for a permit to remediate contaminated soil at any site within the city of Albany shall be made on a form prescribed by the City. The application shall be complete in all respects and shall contain, at a minimum, the following information:

(1) The name of the permittee and the name of the owner of the property on which the soil will be remediated.

(2) The location at which remediation is proposed.

(3) The source of the contaminated soil.

(4) The nature of the contaminant.

(5) A site plan map showing the boundaries of the site, all physical improvements on the site, the portion of the site to be used for remediation, the total land area of the site to be used for remediation.

(6) A letter of authorization from the State of Oregon, Department of Environmental Quality authorizing remediation at the site.

(7) The proposed location for the contaminated soil after remediation.

(8) The application must be made both by the owner of the property upon which the remediation will occur and the person in charge of the remediation work.

9.14.030 Permit fee. A fee set by Council resolution shall accompany any application for a soil remediation permit.

9.14.040 Remediation standards. No remediation of contaminated soil shall be permitted in the city of Albany except in accordance with the minimum standards set forth below unless a variance is granted by the Chief of the Fire Department of the City of Albany or his or her designee as set forth in Section 9.14.050 below. Minimum soil remediation standards shall include:

(1) Compliance with all state or federal laws, rules, or regulations concerning the remediation of contaminated soil.

(2) Compliance with all other local laws, ordinances, or regulations governing the remediation of contaminated soil.

(3) Compliance with any requirement or direction lawfully issued by any state, federal, or local agency having jurisdiction over the remediation of contaminated soils.

(4) All soil piles will be fully encapsulated.

(5) A 20 mil visquine liner will be placed at the bottom of the pile to prevent any leaching of the contaminant to the ground below.

(6) The side walls and surface of the soil pile will be completely encapsulated with 10 mil visquine to prevent rain water contamination and run off as well as to contain uncontrolled vapor emissions.

(7) The remediation area will be bermed as necessary to contain any unexpected runoff or release to the environment.

(8) A positive pressure pump or vacuum will be installed and used to extract hydrocarbon vapor particles from the soil pile.

(9) All contaminated water collected through the recovery process must be contained and disposed of according to current standards of the State of Oregon, Department of Environmental Quality.

(10) Any and all water released through the cleaning of the system must be disposed of in compliance with current State of Oregon Department of Environmental Quality standards and current standards of the City of Albany.

(11) The emissions stack must be engineered and designed to meet performance standards established by the State of Oregon, Department of Environmental Quality.

(12) The soil, after remediation, must be disposed of in compliance with

all state, federal, and local environmental and land use regulations.

9.14.050 Variance from minimum remediation standards. (a) If a permittee seeks to remediate contaminated soil through any process not in full compliance with the minimums set forth in Section 9.14.040 above, the applicant for the permit may propose a variance to the standards in the permit application. In such event, the applicant shall identify, in detail, which requirements it seeks to be relieved of and shall provide a written explanation of the precise method of remediation proposed and all safeguards which the applicant proposes to employ.

(b) No variance shall be granted to any state or federal law, ordinance, or regulation, unless accompanied by written confirmation, from the state or federal regulatory agency having responsibility for the enforcement of the law, rule, or regulation in question, authorizing the proposed variance.

(c) The Chief of the Fire Department of the City of Albany, or his or her designee, will review the proposed variance application and, unless the variance is otherwise prohibited, shall grant the variance if the applicant has established, by clear and convincing evidence, that the method of remediation proposed in the variance will effectively remediate the contaminant while, at the same time, providing a level of safety and protection to the environment at least as great as that which would be obtained with compliance with the minimum standards set forth in Section 9.14.040 above.

(d) No variance will be granted unless the applicant, by clear and convincing evidence, has established all of the following:

(1) That at no time will the release of volatile emissions posing a potential threat of fire or explosion be allowed.

(2) That any and all water run off will be contained and disposed of in accordance with all applicable state, federal and local laws, ordinances and regulations.

(3) That if discharge of water run off is proposed into the City's storm drainage system, a letter of authorization has been obtained from the City Engineer of the City of Albany.

(4) The remediation project shall have clearly demonstrated the ability to prevent the release of noxious petroleum orders that are detectable by humans beyond the remediation site.

(5) That at no time will leachate from the contaminated soil be allowed to make contact with uncontaminated soil.

9.14.060 Appeals process. (a) Should the Chief of the Fire Department of the City of Albany, or his or her designee, decline a soil remediation application or an application for a variance, the applicant may request a hearing before the City Council of the City of Albany. Such a request for hearing must be received, in writing, by the Chief of the Fire Department of the City of Albany, within ten (10) days of the date that the applicant is notified, in writing, of the denial of the application. The Request for Hearing must also contain a statement of the reasons why the applicant believes the denial was in error.

(b) Upon timely receipt of a Request for Hearing, the City Council of the City of Albany shall schedule a hearing concerning the permit denial at which time the permit applicant, and representatives of the Fire Department of the City of Albany shall be permitted to give testimony. The Mayor of the City of Albany, with the advice of the City of Attorney of the City of Albany shall prescribe hearing procedures.

(c) The burden of proof at the hearing shall rest with the applicant. The standards shall be clear and convincing evidence that all elements of the application criteria, or variance criteria, have been met in full and that the decision of the Fire Chief of the City of Albany was in error.

(d) The City Council of the City of Albany shall have authority to reverse, affirm, or modify the decision of the Fire Chief of the City of Albany, however, nothing contained herein shall authorize the City Council to issue a soil remediation permit if such permit would violate applicable state, federal, or local laws, ordinances and regulations.


9.14.070 Penalty. Violation of any of the terms of this section, including the failure to comply with any of the terms of a soil remediation permit shall be a misdemeanor punishable under the general penalty provisions of AMC Chapter 1.04.

Section 2. Emergency Clause. The peace, health, and safety of the people of the City of Albany require that this ordinance become effective immediately upon its final passage by the Council and approval by the Mayor.

Passed by Council June 12, 1991

Approved by the Mayor: June 13, 1991

Effective Date: June 12, 1991



Mayor

ATTEST:



City Recorder