

ORDINANCE NO. 484 N.S.

AN ORDINANCE AMENDING TITLE 7 OF THE CITY OF
EL PASO DE ROBLES MUNICIPAL CODE BY ADDING CHAPTER 7.30
THERETO RELATING TO THE UNDERGROUND STORAGE OF HAZARDOUS SUBSTANCES

The City Council of the City of El Paso de Robles, State of California, does ordain as follows:

SECTION 1. Title 7 of the Paso Robles Municipal Code is hereby amended by adding Chapter 7.30 thereto, which said chapter reads as follows:

CHAPTER 7.30

UNDERGROUND STORAGE OF HAZARDOUS SUBSTANCES

Section 7.30.010 Purpose. It is the purpose of this chapter to establish standards for construction and monitoring of facilities used for the underground storage of hazardous substances, and to establish a procedure for issuance of permits for the use of these facilities.

Section 7.30.020 Definitions. For the purpose of this chapter, the following words and phrases are defined, and shall be construed as hereinafter set out, unless it shall be apparent from the context that they have a different meaning:

(a) "Board" means the City Council of the City of El Paso de Robles.

(b) "Facility" means any one, or combination of, underground storage tanks used by a single business entity at a single location or site.

(c) "Hazardous substance" means all of the following liquid and solid substances, unless the State Department of Health Services, in consultation with the State Water Resources Control Board, determines the substance could not adversely affect the quality of the waters of the County or the region:

(1) Substances on the list prepared by the Director of the Department of Industrial Relations pursuant to Section 6382 of the Labor Code of the State of California.

(2) Hazardous substances, as defined in Section 25316 of the Health and Safety Code of the State of California.

(3) Any substance or material which is classified by the National Fire Protection Association (NFPA) as a flammable liquid, a Class II combustible liquid, or a Class III-A

operator has monitored and tested the tank as required by the permit, and whether the tank is in a safe operating condition. After any inspection, the Permitting Authority shall prepare a compliance report detailing the inspection and shall send a copy of this report to the permit holder.

(b) In addition to, or instead of, the inspections specified in subdivision (a), the Permitting Authority may require the permit holder to employ, periodically, special inspectors to conduct an audit for assessment of the permit holder's facility to determine whether the facility complies with the factors specified in subdivision (a) and to prepare a special inspection report with recommendations concerning the safe storage of hazardous materials at the facility. The report shall contain recommendations consistent with the provisions of this chapter, where appropriate. A copy of this report shall be filed with the Permitting Authority at the same time the inspector submits the report to the permit holder. Within thirty (30) days after receiving this report, the permit holder shall file with the Permitting Authority a plan to implement all recommendations contained in the report or shall demonstrate, to the satisfaction of the Permitting Authority, why these recommendations should not be implemented.

(c) In order to carry out the purposes of this chapter, any duly authorized representative of the Permitting Authority has the authority to inspect any place where underground storage tanks are located or to inspect real property which is within two thousand (2,000) feet of any place where storage tanks are located.

Section 7.30.140 Unauthorized release.

(a) Any unauthorized release from the primary containment which the operator is able to clean up within eight hours and which does not escape from the secondary containment, does not increase the hazard of fire or explosion, and does not cause any deterioration of the secondary containment of the underground storage tank, shall be recorded on the operator's monitoring reports.

(b) Any unauthorized release which escapes from the secondary containment, increases the hazard of fire or explosion, or causes any deterioration of the secondary containment of the underground tank

shall be reported by the operator of the Permitting Authority within twenty-four (24) hours after the release has been detected or should have been detected. A full written report shall be transmitted by the owner or operator of the underground storage tanks within five working days of the occurrence of the release.

The Permitting Authority shall review the permit whenever there has been an unauthorized release or when it determines that the underground storage tank is unsafe. In determining whether to modify or terminate the permit, the Permitting Authority shall consider the age of the tank, the methods of containment, the methods of monitoring, the feasibility of any required repairs, the concentration of the hazardous substances stored in the tank, the severity of potential unauthorized releases, and the suitability of any other long-term preventive measures which would meet the requirements of this chapter.

Section 7.30.150 Hearing Authority. Whenever the term "Hearing Authority" is utilized in this Title, it shall be deemed to refer to one or more persons assigned the responsibility of conducting a hearing by the City Manager. The City Manager shall be authorized to assign hearing responsibility from time to time to either:

(a) City management personnel who the City Manager finds are qualified by training and experience to conduct such hearings; or

(b) any person or persons, qualified by training or experience, who the City Manager may recommend the City employ or retain by contract to conduct such hearings; or

(c) Administrative Law Judges assigned by the State of California Office of Administrative Hearings.

Section 7.30.160 Appeals. Any decision of the Permitting Authority may be appealed to the Hearing Authority.

Any such appeal shall be in writing, shall state the specific reasons therefor and ground asserted for relief, and shall be filed with the City Clerk not later than fifteen (15) days after the date of service. If an appeal is not filed within the time or in the manner prescribed above, the right to review of the action against which complaint is made shall be deemed to have been waived.

Section 7.30.170 Appeal Hearing. Not later than thirty (30) days, or longer if a notice of continuance is mailed to the appellant, following the date of filing an appeal within the time and the manner prescribed by Section 7.30.160, the Hearing Authority shall conduct a hearing for the purpose of determining whether the appeal should be granted. Written notice of the time, date and place of the hearing shall be mailed to the appellant not later than ten days preceding the date of the hearing.

During the hearing, the burden of proof shall rest with the appellant. The provisions of the California Administration Procedure Act (commencing at Section 11500 of the government Code) shall not be applicable to such hearings; nor shall formal rules of evidence in civil or criminal judicial proceedings be so applicable. At the conclusions of the hearing, the Hearing Authority shall prepare a written decision which either grants or denies the appeal, and contains findings of fact and conclusions of law. Notice of the written decision, including a copy thereof, shall be filed with the City Clerk and mailed to the appellant not later than seven (7) days following the date on which the hearing is closed.

Section 7.30.180 Finality of determination. The decision by the Hearing Authority shall become final upon the date of filing and mailing.

Section 7.30.190 Grounds for revocation. Any Permit to Operate issued pursuant to this chapter may be revoked during its term upon one or more of the following grounds:

(a) That an unauthorized release has occurred pursuant to subdivision (b) of Section 7.30.140.

(b) That modifications have been made to the underground storage tank or facility in violation of the Permit to Operate.

(c) That the holder of the permit has violated one or more conditions upon which the permit has been issued.

Section 7.30.200 Method of revocation. The Permitting Authority may revoke a Permit to Operate by issuing a written notice of revocation, stating the reasons therefor, and serving same, together

with a copy of the provisions of this chapter, upon the holder of the permit. The revocation shall become effective fifteen (15) days after the date of service, unless the holder of the license files an appeal within the time and in accordance with the provisions of Section 7.30.160. If such an appeal is filed, the revocation shall not become effective until a final decision on the appeal is issued.

Section 7.30.210 Administration. Except as otherwise provided, the City Building Official is charged with the responsibility of administering this chapter, and shall be authorized from time to time to promulgate and enforce such rules or regulations consistent with the purposes, intent, and express terms of this Title as he deems necessary to implement such purposes, intent and express terms.

Section 7.30.220 Violations.

(a) Any operator of any underground storage tank shall be liable for a civil penalty of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000) per day for any of the following:

- (1) Operates an underground storage tank which has not been issued a permit.
- (2) Fails to monitor the underground storage tank, as required by the permit.
- (3) Fails to maintain records, as required by this chapter.
- (4) Fails to report an unauthorized release, as required by Section 7.30.140.
- (5) Fails to properly close an underground storage tank, as required by Section 7.30.050.

(b) Any owner of an underground storage tank shall be liable for a civil penalty of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000) per day for any of the following:

- (1) Failure to obtain a permit as specified by this chapter.
- (2) Failure to repair an underground tank in accordance with the provisions of this chapter.
- (3) Abandonment or improper closure of any underground tank subject to the provisions of this chapter.
- (4) Knowing failure to take reasonable and necessary steps to assure compliance with this chapter by the operator of an underground tank.

(c) Any person who falsifies any monitoring records required by this chapter, or knowingly fails to report an unauthorized release,

shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000) or more than ten thousand dollars (\$10,000), or by imprisonment in the county jail for not to exceed one year, or by both that fine and imprisonment.

(d) In determining both the civil and criminal penalties imposed pursuant to this section, the court shall consider all relevant circumstances, including, but not limited to, the extent of harm or potential harm caused by the violation, the nature of the violation and the period of time over which it occurred, the frequency of past violations, and the corrective action, if any, taken by the person who holds the permit.

(e) Penalties under this section are in addition to, and do not supersede or limit, any and all other legal remedies and penalties, civil or criminal, which may be applicable under other laws.

SECTION 2. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity or the constitutionality of the the remaining portions of this ordinance. The City Council hereby declare that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

SECTION 3. This Urgency Ordinance shall take effect on December 31, 1983.

ADOPTED AND APPROVED this 20th day of December, 1983, by the following roll call vote:

AYES: Councilmen Monroe, Ovitt, Russell, Thorndyke and Stemper

NOES: None

ABSENT: None

ATTEST:

Dawn Hudson
DEPUTY CITY CLERK, DAWN HUDSON

Gary E. Stemper
MAYOR, GARY E. STEMPER

ombustible liquid.

(d) "Operator" means the operator of an underground storage tank.

(e) "Owner" means the owner of an underground storage tank.

(f) "Permitting Authority" shall be the City Building Official or his designee.

(g) "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, and association. "Person" also includes any city, county, district, the State, or any department or agency thereof.

(h) "Pipe" means any pipeline or system of pipelines which is used in connection with the storage of hazardous substances and which are not intended to transport hazardous substances in interstate or intrastate commerce or to transfer hazardous materials in bulk to or from a marine vessel.

(i) "Primary containment" means the first level of containment, such as the portion of a tank which comes into immediate contact on its inner surface with the hazardous substance being contained.

(j) "Product-tight" means impervious to the substance which is contained, or is to be contained, so as to prevent the seepage of the substance from the primary containment. To be product-tight, the tank shall not be subject to physical or chemical deterioration by the substance which it contains over the useful life of the tank.

(k) "Secondary Containment" means the level of containment external to, and separate from, the primary containment.

(l) "Single-walled" means construction with walls made of only one thickness of material. For the purpose of this chapter, laminated, coated, or clad material shall be considered single-walled.

(m) "Special inspectors" means a professional engineer, registered pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code of the State of California, who is qualified to attest, at a minimum, to structural soundness, seismic safety, and compatibility of construction materials with contents, cathodic protection, and the mechanical compatibility of the structural

elements.

(n) "Storage" or "store" means the containment, handling or treatment of hazardous substance, either on a temporary basis or for a period of years. "Storage" or "store" does not mean the storage of hazardous wastes in an underground storage tank if the person operating the tank has been issued a hazardous waste facilities permit by the State Department of Health Services pursuant to Section 25200 or granted interim status under Section 25200.5 of the Health and Safety Code of the State of California.

(o) "Unauthorized release" means any release or emission of any hazardous substance which does not conform to the provisions of this chapter, unless this release is authorized by the State Water Resources Control Board pursuant to Division 7 (commencing with Section 13000) of the Water Code of the State of California.

(p) "Underground storage tank" means any one or combination of tanks, including pipes connected thereto, which is used for the storage of hazardous substances and which is substantially or totally beneath the surface of the ground. "Underground storage tank" does not include any of the following:

(1) A tank used for the storage of hazardous substances used for the control of external parasites of cattle and subject to the supervision of the County Agricultural Commissioner if the County Agricultural Commission determines, by inspection prior to use, that the tank provides a level of protection equivalent to that required by Section 7.30.030, if the tank was installed after June 30, 1984, or protection equivalent to that provided by Section 7.30.040, if the tank was installed on or before June 30, 1984.

(2) Tanks which are located on a farm and store motor vehicle fuel which is used only to propel vehicles used primarily for agricultural purposes.

(3) Tanks used for aviation or motor vehicle fuel located within one mile of a farm and the tank is used by a licensed pest control operator, as defined by Section 11705 of the Food and Agricultural Code of the State of California, who is primarily involved in agricultural pest control activities.

(4) Structures such as sumps, separators, storm drains, catch basins, oil field gathering lines, refinery pipelines, lagoons, evaporation ponds, well cellars, separation sumps, lined and unlined pits, sumps and lagoons. Sumps which are a part of a monitoring system required under Section 7.30.030 and 7.30.040 are not exempted by this section.

Section 7.30.030 Design standards and monitoring systems for new facilities. No underground storage tank or facility shall be installed

after January 1, 1984, unless a Permit to Operate is first obtained from the Permitting Agency. A Permit to Operate shall not be issued for any underground storage tank or facility installed after January 1, 1984, unless the underground storage tank or facility meets the following requirements:

(a) Be designed and constructed to provide primary and secondary levels of containment of the hazardous substances stored in them in accordance with the following performance standards:

(1) Primary containment shall be product-tight.

(2) Secondary containment shall be constructed to prevent structural weakening as a result of contact with any released hazardous substances, and also shall be capable of storing for the maximum anticipated period of time necessary for the recovery of any released hazardous substance.

(3) In the case of an installation with one primary container, the secondary containment shall be large enough to contain at least 100 percent of the volume of the primary tank.

(4) In the case of multiple primary tanks, the secondary container shall be large enough to contain 150 percent of the volume of the largest primary tank placed in it, or 10 percent of the aggregate internal volume of all primary tanks, whichever is greater.

(5) If the facility is open to rainfall, then the secondary containment must be able to additionally accommodate the volume of a 24-hour rainfall as determined by a 100-year storm history.

(6) Single-walled containers do not fulfill the requirement of an underground storage tank providing both a primary and secondary containment.

(7) The design and construction of underground storage tanks for motor vehicle fuel storage need not meet the requirement of paragraphs (1) to (6), inclusive, if the primary containment construction is of glass fiber, reinforced plastic, cathodically protected steel, or steel clad with glass fiber reinforced plastic, any such alternative primary containment is installed in conjunction with a system that will intercept and direct a leak from any part of the tank to a monitoring well to detect any release of motor vehicle fuels stored in the tank and which is designed to provide early leak detection, response, and to protect groundwater from releases, and if the monitoring is in accordance with the alternative method identified in paragraph (3) of subdivision (b) of Section 7.30.040. Pressurized piping systems connected to underground storage tanks used for the storage of motor vehicle fuels and monitored in accordance with paragraph (3) of subdivision (b) of Section 7.30.040 shall also be deemed to meet the requirements of this subdivision.

(b) Be designed and constructed with a monitoring system capable of detecting entry of the hazardous material stored in the primary containment into the secondary containment. If the water could intrude into the secondary containment, a means of monitoring for water

intrusion and for safely removing the water shall also be provided.

(c) When required by the Permitting Authority, a means of overflow protection for any primary tank, including an overflow prevention device or an attention-getting higher level alarm, or both. Primary tank filling operations of underground storage tanks containing motor vehicle fuels which are visually monitored and controlled by a facility operator satisfy the requirements of this paragraph.

(d) Different substances that in combination may cause a fire or explosion, or the production of flammable, toxic, or poisonous gas, or the deterioration of a primary or secondary container, shall be separated in both the primary and secondary containment so as to avoid potential intermixing.

(e) If water could enter the secondary containment by precipitation or infiltration, the facility shall contain a means of removing the water by the owner or operator. This removal system shall also provide for a means of analyzing the removed water for hazardous substance contamination and a means of disposing of the water, if so contaminated, at an authorized disposal facility.

Section 7.30.040 Monitoring systems for existing facilities. No underground storage tank or facility installed on or before January 1, 1984, and used for the storage of hazardous substances shall continue to operate unless a Permit to Operate is obtained by January 1, 1985. No Permit to Operate such a tank or facility shall be issued or remain valid unless the following actions are taken:

(a) On or before January 1, 1985, the owner shall outfit the facility with a monitoring system capable of detecting unauthorized releases of any hazardous substances stored in the facility, and thereafter, the operator shall monitor each facility, based on materials stored and the type of monitoring installed.

(b) On or before January 1, 1985, the owner shall provide a means for visual inspection of the tank, whenever practical, for the purpose of the monitoring required by subdivision (a). Alternative methods of monitoring the tank on a monthly, or more frequent basis, may be required by the Permitting Authority.

The alternative monitoring methods include, but are not limited to, the following methods:

(1) Pressure testing, vacuum testing or hydrostatic testing of the piping systems or underground storage tanks.

(2) A groundwater monitoring well or wells which are down gradient and adjacent to the underground storage tank, vapor analysis within a well where appropriate, an analysis of soil borings at the time of initial installation of the well. The Permitting Authority shall develop regulations specifying monitoring alternatives and shall approve the locations and number of wells, the depth of wells and the sampling frequency, pursuant to these regulations.

(3) For monitoring tanks containing motor vehicle fuels, daily gauging and inventory reconciliation by the operator, if inventory records are kept on file for one year and are reviewed quarterly, the tank is tested for tightness hydrostatically or, when appropriate with pressure between three and five pounds, inclusive, per square inch at time intervals specified by the State Water Resources Control Board and whenever any pressurized system has a leak detection device to monitor for leaks in the piping. The tank shall also be tested for tightness hydrostatically or where appropriate, with pressure between three and five pounds, inclusive, per square inch whenever there is a shortage greater than the amount which the State Water Resources Control Board shall specify by regulation.

Section 7.30.050 Abandonment.

(a) No person shall abandon an underground storage tank or close or temporarily cease operating an underground storage tank except as provided in this section.

(b) An underground storage tank which is temporarily taken out of service, but which the operator intends to return to use, shall continue to be subject to all the permit, inspection, and monitoring requirements of this chapter, unless the operator complies with the provisions of subdivision (c) for the period of time the underground tank is not in use.

(c) No person shall close an underground storage tank unless the person undertakes all of the following actions:

(1) Demonstrates to the Permitting Authority that all residual amounts of the hazardous substance or hazardous substances which were stored in the tank prior to its closure have been removed, properly disposed of, and neutralized.

(2) Adequately seals the tank to minimize any threat to the public safety and the possibility of water intrusion into, or runoff from, the tank.

(3) Provides for, and carries out, the maintenance of the tank as Permitting Authority determines is necessary, for the period of time the Permitting Authority requires.

(4) Demonstrates to the Permitting Authority that there has

been no significant soil contamination resulting from a discharge in the area surrounding the underground storage tank or facility.

Section 7.30.050 Permit required.

(a) No person shall operate a facility for the underground storage of any hazardous substance within the incorporated area of the City of El Paso de Robles, unless by authority of a valid, unexpired and unrevoked Permit to Operate issued to the owner pursuant to the provisions of this chapter.

(b) A person shall be deemed to operate a facility and violate this section if the person, without a required Permit to operate in effect, supervises, inspects, directs, organizes, manages or controls, or is in any way responsible for or in charge of the facility for which the permit is required.

(c) This section does not obviate the requirements to obtain valid permits pursuant to Title 17 of this Code, or compliance with other applicable ordinances, including but not limited to the Paso Robles General Plan and Zoning Ordinance.

Section 7.30.060 Application filing. All applications for a Permit to Operate shall be filed in the office of the City Building Official.

Section 7.30.070 Application contents. The application for a Permit to Operate shall be filed on a form and contain such information as is prescribed by the Permitting Authority, including the following:

(a) A description of the construction of the underground storage tank or tanks.

(b) A list of all the hazardous substances which are or will be stored in the underground storage tank or tanks, specifying the hazardous substances for each underground storage tank.

(c) A description of the monitoring program for the underground storage tank or tanks.

(d) The name and address of the person, firm or corporation which owns the underground storage tank or tanks and, if different, the name and address of the person who operates the underground storage tank or

tanks.

(e) The address of the facility at which the underground storage tank or tanks are located.

(f) The name of the person making the application.

(g) The name and 24-hour phone number of the contact person in the event of an emergency involving the facility.

(h) If the owner or operator of the underground storage tank is a public agency, the application shall include the name of the supervisor of the division, section, or office which operates the tank.

(i) Such other further information as is deemed necessary to administer the provisions of this chapter.

Section 7.30.080 Issuance. The Permitting Authority shall act upon the application not later than ninety (90) days after the date it is accepted as complete unless the applicant has filed with the Permitting Authority written notice of a request and received written approval for extension of the time within which action is taken on the grounds that additional time is required to prepare or present plans or other information, obtain zoning variances, development plans, or other permits, or make other corrections remedying inconsistencies with the provisions of this chapter; or the Permitting Authority has on file a written notice from a public agency showing just cause for an extension of time, and has approved an extension of time pursuant thereto.

Section 7.30.090 Term. The term of the permit to operate shall be five (5) years, at which time the permittee may apply for renewal pursuant to Section 7.30.080.

Section 7.30.100 Contents of permit.

(a) The Permit to Operate shall contain a complete description of the enterprise for which it is issued, the date of issuance and date of expiration, and a description of any and all conditions upon which the permit has been issued. A copy of the permit shall be kept on the premises and shall be made available to the Permitting Authority upon demand.

(b) As a condition of any Permit to Operate an underground storage

tank, the permittee shall complete an annual report form prepared by the Permitting Authority, which will detail any changes in the usage of any underground storage tanks, including the storage of new hazardous substances, changes in monitoring procedure and unauthorized release occurrences.

Section 7.30.110 Fees. The Board may, by resolution or ordinance and from time to time, prescribe fees for the issuance and renewal of a Permit to Operate and fees for the filing of appeals relating to demand of such permits or the revocation thereof.

Section 7.30.120 Transferability.

(a) Except as provided in subdivision (b), no person shall operate an underground storage tank unless a Permit to Operate has been issued. Any person who is to assume the ownership of and underground storage tank from the previous owner shall complete the form accepting the obligations of the permit and subject the completed form to the Permitting Authority at least thirty (30) days after the ownership of the underground storage tank is to be transferred. The Permitting Authority may review and modify, or terminate the transfer of the Permit to Operate the underground storage tank upon receiving the completed form.

(b) Any person assuming ownership of an underground storage tank used for the storage of hazardous substances for which a valid Permit to Operate has been issued shall have thirty (30) days after the date of assumption of ownership to apply for a Permit to Operate or, if accepting a transferred permit, shall submit to the Permitting Authority the completed form accepting the obligation of the transferred permit, as specified in subdivision (a). During the period from the date of application until the permit is issued, reissued, or revoked the person shall not be held to be in violation of this section.

Section 7.30.130 Inspections.

(a) The Permitting Authority shall inspect every underground storage tank or facility at least once every three years. The purpose of the inspection is to determine whether the tank or facility complies with the design and construction standards of this chapter, whether the