

BAY CITY ORDINANCES

ORDINANCE NO. 638

AN ORDINANCE SETTING FORTH PROCEDURES AND ALLOCATION OF COSTS FOR LANDSLIDES AFFECTING PUBLIC PROPERTY AND PUBLIC RIGHTS OF WAY WITHIN THE CITY OF BAY CITY AND DECLARING AN EMERGENCY

The City of Bay City ordains as follows:

Section 1. Purpose. The purpose of this Ordinance is to protect the public from hazards created by landslides that deposit material on the public rights-of-way and on other public property. The intent of this Ordinance is to provide for the immediate abatement of a landslide by the responsible property owner or, if necessary, by the City.

Section 2. Definitions.

A. "Costs" means any costs, direct or indirect, incurred by the City in the abatement of a landslide or oversight of the abatement performed by the Owner of the responsible property. Costs may include, but are not limited to, those associated with the removal of debris, traffic control and barricading, engineering, construction, erosion control, reforestation, restoration and repair of existing public facilities, including City staff time, plus a 10% administration fee for all staff time associated with the abatement.

B. "Landslide" means the movement of earth that results in the deposit of soil, rock, vegetation or other debris in a public right-of-way or onto public property.

C. "Owner" means the person or persons shown on the most recent property tax records.

D. "Responsible property" means the property or properties abutting that portion of the public right-of-way or public property on which materials have been deposited by a landslide.

Section 3. Applicability. This Ordinance applies to:

A. Landslides that originate on private property and deposit material on the public right-of-way or on public property.

B. Landslides in the public right-of-way or on public property caused by actions on property abutting such public right-of-way or public property.

Section 4. Landslide is a Nuisance.

A. A landslide is a public nuisance, and may be abated in accordance with applicable City Ordinances dealing with public nuisances. Abatement by the City shall be conducted at the direction of the City Public Works Superintendent and the City's Engineer, if applicable. The City Public Works Superintendent may direct summary abatement where there is an immediate threat to the public safety.

B. Recovery of costs incurred by the City in the abatement of a landslide shall be as provided in Section 6, and such costs shall be assessed to the responsible property owner.

Section 5. Presumption of Responsibility. Landslide abatement is presumed to be the responsibility of that property owner as set forth in Exhibits A, B, and C attached hereto.

Section 6. Abatement. The owner of the responsible property is required to abate the landslide.

A. Abatement of a landslide includes:

1. Immediate work necessary to remove the debris from any areas where it would constitute or create a hazard to the public and to temporarily stabilize the slope; and

2. Permanent stabilization of the slope, as necessary, which may be through engineered solutions, such as a retaining wall or riprap. Plans and specifications for permanent stabilization shall be prepared by a professional engineer registered in the State of Oregon and shall be approved by the City Engineer.

C. If summary abatement is not directed, the City Public Works Superintendent may post notice on the responsible property of the requirement for immediate abatement, including dates by which the abatement must be completed. Such notice shall also be mailed to the owner and/or occupant of the responsible property. If the abatement is not completed within the time provided in the notice, the City Public Works Superintendent may cause the landslide to be abated and the costs shall be assessed against the responsible property.

D. Where necessary, the City may also post and mail notice regarding the requirement for permanent stabilization of the slope. Such notice shall include the date by which plans for such permanent stabilization shall be submitted to the City. If such plans are not submitted by the stated date, the City Public Works Superintendent may cause the permanent stabilization portion of

the abatement to be accomplished and the costs incurred by the City assessed against the responsible property.

E. Before beginning any work in the public right-of-way or public property, the owner of the responsible property shall obtain the approval of the City and the City Public Works Superintendent, as well as obtain all necessary permits.

F. A building permit may be required for permanent stabilization work performed. The owner of the responsible property shall be responsible for obtaining necessary permits prior to work being done.

G. If at any stage of the abatement, the owner of the responsible property fails to comply with the requirements imposed by the City and the City Public Works Superintendent, the City Public Works Superintendent may cause the abatement to be completed by the City and the cost assessed against the responsible property.

H. If there is more than one responsible property, the City shall apportion all costs incurred by the City in abatement based on the front footage of the slide area in the right-of-way or public property.

I. Nothing in this Ordinance shall be deemed to prevent a party required by this Chapter to pay for abatement of a landslide from exercising any rights her or she may have against the party or parties who may have caused the landslide.

Section 7. Appeal.

Any owner of responsible property may request a hearing before the Bay City Council to review whether or not the owner should be held responsible for the costs of landslide abatement or for the purposes of disputing or allocating the costs of landslide abatement.

Section 8. Severability.

If any section, subsection, sentence, clause or phrase of this ordinance of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance, which shall continue in full force and effect.

Section 9. Emergency.

The City Council desires to adequately prepare for future landslides within the City, and the City Council declares an emergency to exist to protect the health, safety, and welfare of its citizens and declares that this Ordinance shall

become immediately effective upon passage by the City Council and approval by the Mayor.

PASSED and ADOPTED by the City Council this 13th day of May, 2008 and APPROVED by the Mayor this 13th day of May, 2008.

/s/ Shaena E. Peterson
Shaena E. Peterson, Mayor

Attest:

/s/ Linda Dvorak
Linda Dvorak, City Recorder

First Reading: May 13, 2008
Second Reading: May 13, 2008
Adoption: May 13, 2008
Ayes: 5
Nays: 0
Abstentions: 0