

Protection from Asbestos Contamination

Sections:

8.61. Declaration of Public Interest and Threat to Health, Safety and Welfare.

- A. A serious public emergency exists in the City with respect to real property that is contaminated with asbestos, causing many citizens to live in unsafe or potentially unsafe conditions if the asbestos is removed or disturbed. The legal remedies available to the Inspectional Services Department and the Health Department, as well as other applicable State and Federal laws and regulations, are insufficient to protect the public interest. The health and safety of citizens is therefore endangered, particularly when properties containing asbestos are developed, constructed upon or altered in a fashion that disturbs the soil.

- B. In order to provide the Inspectional Services Department and the Health Department with the remedies necessary to effectively carry out their mandate under State and Federal law, and City Ordinances, and to encourage owners of such property to comply with this code, and relevant laws and regulations, the Cambridge City Council, in the exercise of its powers under Section --- of the Home Rule Amendments, enacts the ordinance codified in this chapter under which administrative citations are issued to owners who violate such provisions of the law.

8.61.001 Definitions

As used in this chapter:

- A. "Asbestos-Contaminated Soil" shall be defined as soil in which asbestos has been detected by laboratory analysis using polarized light microscopy (PLM) or transmission electron microscopy (TEM) or equivalent method; or soil which is within 50 feet of soil in which asbestos has been detected by laboratory analysis using PLM or TEM or equivalent method; or soil where asbestos contamination can reasonably be expected to be present based on past use of the property, unless a comprehensive soil sampling has been performed and laboratory analysis has not identified asbestos in soil using PLM or TEM or equivalent method.

- B. "Disturbance of soil" shall be defined as excavation, grading, tilling, or any other such activity that may cause

release of fugitive dust. Disturbance shall not include direct-push or vibratory installation or extraction of piles, sheet pile, or wells, but shall include any excavation in the vicinity of such direct-push or vibratory installations, e.g. for the construction of pile caps. Disturbance also shall not include drilling of boreholes 12 inches in diameter or less by hollow stem auger or similar method for the purpose of environmental evaluation or remediation.

8.61.002 Disturbance of Soil Violation.

- A. Asbestos-contaminated soil shall not be disturbed at any site unless the disturbance of the soil is conducted within a permanent or temporary structure maintained at a partial vacuum sufficient to contain all fugitive dust, with offgas from the evacuation system treated with HEPA filtration as well as any other vapor treatment technology necessary to control volatile organic compounds and/or odors.
- B. Alternatively, activities which would result in disturbance of the soil may be conducted at a site with asbestos-contaminated soil if a layer of clean fill is first placed on the site in the area of the proposed disturbance of the soil. The layer of clean fill must be of sufficient depth such that the proposed disturbance of the soil would occur in and/or affect only the clean fill layer and not the asbestos-contaminated soil beneath the clean fill.

8.61.003 Exemptions

- A. Exemptions to this regulation may be granted under the following circumstances: emergency repair of underground utilities at the site, with prior notification of the City Public Health Director; maintenance of underground utilities, with prior permission from the City Public Health Director; a request for an exemption is made to the City Council and approved, after a 60 day waiting period, by a vote of at least two thirds of the City Council, provided fewer than ten (10) residents living within $\frac{1}{4}$ mile of the property have not objected to the exemption during the waiting period; or a request for an exemption is made to the City Council and approved, after a 60 day waiting period, by a vote of at least three quarters of the City Council, if at least ten (10) residents living within $\frac{1}{4}$ mile of the property have objected to the exemption during the waiting period.
- B. In the event that such an exemption is granted, measures must be taken to control the release of fugitive dust, such as water spray during soil disposal activities. A plan detailing dust control measures must be submitted to and

approved by the City Public Health Director prior to any soil disturbance, unless an emergency situation exists.

8.61.004 Administrative Citations - Issuance

- A. Whenever the Inspectional Services Department or the Public Health Department is informed of or becomes aware of the existence of asbestos contaminated soil situated in the City of Cambridge, it shall immediately issue, in addition to any other orders it may make under existing provisions of law, an administrative citation according to the provisions of this chapter.
- B. The administrative citation shall indicate
 - 1. The date of the inspection or the source of the information indicating that serious levels of asbestos exist at a given location;
 - 2. A notice of temporary suspension of all building, construction or landscaping activity on such site until such time as the owner of such site has filed and received approval of a plan with the Department of Health which shall explain in detail how the public health will be protected in any removal or disturbance of soils.
 - 3. Further, such plan shall be subject to public hearing within 60 days of submission and may not be approved until the public hearing has been held.
 - 4. The amount of fine which shall be assessed against the owner if building or construction activity is commenced on an asbestos contaminated site without approval of a plan.
 - 5. A description of the owner's appeal rights with respect to the issuance of the administrative citation and of any fine.
- C. The administrative citation shall be served on the owner, along with any orders to make repairs, in accordance with the provisions of this Ordinance.
- D. A copy of the administrative citation shall also be served on the occupants of any commercial or residential unit that is located upon the contaminated site and shall be posted in the common areas of the commercial or residential unit.
- E. The Inspectional Services Department shall send a copy of the administrative citation to the mortgagee of the property. The City shall request that the mortgagee seek to cure, through all applicable provisions of its mortgage,

except through foreclosure or increase in interest rates, any and all violations of this chapter.

- F. A copy of the administrative citation shall be retained by the Inspectional Services Department and be available for public inspection and copying.

8.61.05 Inspection.

- A. The Inspectional Services Department and the Health Department or their designee shall be entitled to enter upon land with asbestos-contaminated soil for the purpose of further testing or examination of the site to determine if building or construction is taking place.

8.61.06 Regulations.

- A. The Commissioner of Inspectional Services and the Department of Health shall jointly promulgate regulations consistent with the terms of this chapter and any applicable state laws and regulations.

8.61.07 Fines for commencing construction without approved plan.

- A. If an owner fails to file and receive approval for a plan intended to reduce the health hazards associated with asbestos contaminated soil, a fine shall be assessed against the owner.
- B. The amount of the fine shall be 10 percent (10%) of the assessed value of the property, which shall be immediately due and payable to the City of Cambridge upon receipt of notice by the owner.
- C. In addition to such fines, the Inspectional Services Department or the Health Department shall immediately issue a cease and desist order requiring the owner to terminate any and all construction, development or landscaping work on the property until such time as a proper plan has been filed and approved by the city.
- D. In addition, the owner shall be given notice that the fine shall automatically double if any violation cited in the administrative citation is not remedied within two weeks of service of the notice of the fine and shall automatically triple if any violation is not remedied within one month of service of the notice of the fine.

E. Any person aggrieved by the failure of the City to take such enforcement action, may seek injunctive relief in the District or Superior Court pursuant to Massachusetts General Laws, Chapters 214 and 218, Section 19C to require action by the City in accordance with its enforcement obligations under this Section.



City of Cambridge

O-2.

IN CITY COUNCIL

July 26, 1999

COUNCILLOR TRIANTFILLOU
COUNCILLOR TOOMEY
COUNCILLOR SULLIVAN
VICE MAYOR GALLUCCIO
COUNCILLOR REEVES
COUNCILLOR BORN
COUNCILLOR DAVIS
MAYOR DUEHAY
COUNCILLOR RUSSELL

ORDERED: That the City Manager be and hereby is requested to direct the Inspectional Services Department not to issue a building permit for any construction on the Alewife site owned by W.R. Grace until such time as there exists no danger to the safety of neighbors, residents and children from asbestos; and further, that no construction commence until such time as a satisfactory plan has been put into place to protect the safety of neighbors, residents and children as certified by the Department of Public Health.

In City Council July 26, 1999.

Adopted by the affirmative vote of nine members.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

ATTEST:-

A handwritten signature in cursive script that reads 'D. Margaret Drury'.

D. Margaret Drury
City Clerk

Policy Order list

From: KTCouncil@aol.com
Date sent: Tue, 29 Jun 1999 08:31:12 EDT
Subject: resolution
To: dlopez@ci.cambridge.ma.us

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Councilor Triantafillou
Councilor Toomey
Sullivan

AG KR 7-22-99

Resolution Regarding the Issuance of a Building Permit to W.R. Grace for proposed building on Alewife Site

Resolved, that the City Manager be and is hereby requested to direct the Inspectional Services Department not to issue a building permit for any construction on the Alewife Site owned by W.R. Grace until such time as there exists no danger to the safety of neighbors, residents and children from asbestos; and further, that no construction commence until such time as a satisfactory plan has been put into place to protect the safety of neighbors, residents and children as certified by the Department of Public Health.



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Order #2 303 CM

Councillors Triantafillou, Toomey,
Sullivan, Vice Mayor Galluccio and
Councillor Reeves re: do not issue
building permits for any construction
on the Alewife site owned by W.R.
Grace until the neighbors, residents
and children are safe from asbestos.

In City Council July 26, 1999

ORDER ADOPTED