

 <div style="text-align: center;"> <h1 style="margin: 0;">Council Communication</h1> <p style="margin: 0;">Office of the City Manager</p> </div>	Date	July 27, 2009
	<p>Agenda Item No. 32</p> <p>Roll Call No. <u>09-</u></p> <p>Communication No. <u>09-501</u></p> <p>Submitted by: Matt Anderson</p> <p>Economic Development Administrator</p>	

AGENDA HEADING:

Resolution endorsing the extension of the Brownfields Program and the amendment of the program regulations to clarify and bolster liability protections for cities that acquire brownfield sites.

SYNOPSIS:

The US Conference of Mayors, National League of Cities, National Association of Counties, and numerous individual cities have endorsed action on a bill to reauthorize and amend the U.S. Environmental Protection Agency (EPA) Brownfields Program. The proposed amendment would clarify and bolster liability protections for public entities when they acquire contaminated land.

The City Council is asked to endorse concepts as presented below and authorize the Mayor to execute the accompanying letter to the U.S. House of Representatives.

FISCAL IMPACT: NONE

Amount: N/A

Funding Source: N/A

ADDITIONAL INFORMATION:

America's communities face a daunting but critically important task in attempting to clean up brownfields sites for new uses. Cities are in the process of transitioning their economies from industry and manufacturing to new sources of economic growth. The most environmentally responsible way to accommodate the new engines of growth is to locate the new uses right where the old industrial plants were established, with infrastructure in place and the workforce nearby. However, with an estimated 450,000 to 1,000,000 brownfield sites nationally, the task at hand faces numerous obstacles. Some of those obstacles would be significantly reduced if Congress adopts the recommendations of the National Brownfields Coalition in reauthorizing the EPA Brownfields Program.

One of the Coalition's proposals is to clarify and expand liability protections for public entities that acquire contaminated brownfield sites where the public entities had no involvement in the contamination. This proposal is of great interest to the many localities that are, out of necessity, taking ownership of brownfield properties. Some brownfield sites are unlikely to be redeveloped through private investment. If these sites are blighting influences that prevent neighborhood revitalization, the only option that will work is public acquisition.

Through a variety of means including tax liens, foreclosures, purchase, and the use of eminent domain, local governments can take control of brownfields in order to clear title, consolidate multiple parcels into an economically viable size, conduct site assessments, remediate environmental hazards, address public health and safety issues, and otherwise prepare the property for development by the private sector or for public and community facilities.

Although property acquisition is a vital tool for facilitating the development of brownfields, many local governments have been dissuaded by fears of incurring liability for contamination they had no role in creating or releasing. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) includes liability defenses and exemptions that may protect local governments that “involuntarily” acquire brownfields. However, the majority of the sites acquired by local government are either unprotected (which is the case for voluntary acquisition), or are subject to widely varying interpretations of what is meant by “involuntary acquisition.” Even properties acquired through tax delinquency (one of the examples cited in the law and often presumed to be protected) may not necessarily be exempt if the local government took affirmative (“voluntary”) steps in the tax delinquency process.

The accompanying letter informs Congressional leaders that the City of Des Moines is in favor of amending CERCLA to provide for greater clarity and a higher level of protection for acquisition activities that clearly serve public purposes. The amendments should:

- Eliminate the term “involuntary” in describing the protected activities.
- Add a plain language exemption for local governments that acquire contaminated properties for redevelopment purposes, as long as the governmental entities have not created or released the contamination.
- Modify and expand the current protections under the category of “rendering care and advice” to include actions taken by local government to address public health and safety issues at sites, so long as the governmental entity acts responsibly in doing so.

PREVIOUS COUNCIL ACTION(S): NONE

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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