



**AGENDA ITEM  
CITY COUNCIL MEETING DATE – JUNE 19, 2018  
BUSINESS ITEMS**

**TO** : City Manager

**FROM** : Fire Chief

**SUBJECT** : **SECOND STEP OF MAYOR PATTERSON’S 2-STEP PROCESS  
REQUEST TO DISCUSS ADOPTING AN INDUSTRIAL SAFETY  
ORDINANCE**

**EXECUTIVE SUMMARY:**

At the May 23, 2017 City Council meeting, Mayor Patterson brought a two-step process request to the Council to discuss consideration of adopting an Industrial Safety Ordinance. The Council directed staff to agendize the item for discussion. Staff has included preliminary research on this subject.

**RECOMMENDATION:**

Discuss the merits of drafting and adopting a City of Benicia Industrial Safety Ordinance and give direction to staff on how to proceed. Two options are provided under the “Options for Council Consideration” section of this report.

**BUDGET INFORMATION:**

The costs associated with drafting an Industrial Safety Ordinance are in staff time and possible consultant fees. Additional direct costs will be associated with public outreach and notification. The cost of implementing an Industrial Safety Ordinance could be significant and likely include employing and training additional staff. There is a possibility that some of the costs to the City may be recovered through fees charged to facilities that fall within the ordinance’s purview.

**BACKGROUND:**

**Introduction**

1. At the May 23, 2017 City Council meeting, Mayor Patterson brought a two-step process request (Attachment 1) to the Council to discuss consideration of adopting an Industrial Safety Ordinance. The Council directed staff to agendize the item for discussion. This report includes preliminary information gathered by staff, a Benicia ISO Working Group Draft Ordinance submitted by Mayor Patterson (Attachment 5), and a letter from Valero (Attachment 6).

### **Contra Costa County's Industrial Safety Ordinance**

A landmark Industrial Safety Ordinance (ISO) requiring regulated facilities in Contra Costa County to implement comprehensive safety programs was adopted by the Contra Costa County Board of Supervisors on December 15, 1998 and became effective on January 15, 1999. Since then, the severity of the major chemical accidents or releases in Contra Costa County has had a declining trend with the exception of 2004, 2010 and 2012.

The Contra Costa County ISO covers the following six facilities.

- Phillips 66 Rodeo Refinery
- Shell Oil Martinez Refinery
- Tesoro Golden Eagle Refinery
- Air Products at Shell Refinery
- Air Products at Tesoro Refinery
- Air Liquide - Rodeo Hydrogen Plant

A copy of Contra Costa County's Industrial Safety Ordinance is included as Attachment 2.

In 2002, the City of Richmond adopted the Richmond Industrial Safety Ordinance requiring regulated facilities in the City follow the same requirements as those in unincorporated Contra Costa County. The City of Richmond's ISO is administered by Contra Costa Hazardous Materials Programs (CCHMP), a division of Contra Costa Health Services.

The City of Richmond ISO covers two facilities; they are:

- Chevron Richmond Refinery
- Chemtrade West Richmond Works

A copy of Richmond's Industrial Safety Ordinance is included as Attachment 3.

Implementing the ISO in Contra Costa County is generally considered to have contributed to the decline in incidents at refineries in the County although other regulatory changes and improvements in worker safety are also credited. The Contra Costa County ISO was referenced by the Mayor in her initial request.

### **Solano County Responsible for Refinery Accidental Release Oversight**

With the passage of SB 1082 in 1993, each County is required to have a designated "Certified Unified Program Agency" or CUPA and for Solano County, that role is filled by the Environmental Health Services Division of Solano County Department of Resource Management. The CUPA manages the California Accidental Release Prevention (CalARP) Risk Management Plan for all cities and the incorporated areas in Solano County.

Until October 1, 2017, Solano County's CUPA, was operating under CalARP Program 3. Having recognized the success of Contra Costa County's ISO, California developed a task force to upgrade their regulations. The task force, which included Solano County Department of Resource Management members, worked closely with Contra Costa's Hazardous Materials Division and ultimately used the Contra Costa ISO as a model for the new Program 4 regulations.

## **State of California Aligns Regulations with Contra Costa County's ISO**

Effective October 1, 2017, the State of California updated its refinery regulations to align with, and in some cases, exceed those in the Contra Costa County ISO. A comparison table of the requirements is included as Attachment 4.

On November 7, 2017, Solano County's CUPA began the thorough process of regulating Program 4 at the Benicia Valero refinery. In the first five months since implementing Program 4, the Solano County Department of Resource Management spent 485 hours inspecting, preparing, reviewing, and documenting the Valero Benicia refinery.

Below is a list of task categories included in both the Contra Costa County ISO and CalARP Program 4:

- Review the Risk Management and Safety Plans, document the review, and determine when the plans are complete.
- Audit the facilities that are subject to the CalARP Program / ISO at least once every three years and document the results of each audit.
- Follow-up with recommended action items associated with Risk Management Program (RMP) and Safety Plan reviews and audits to verify that potential problems are adequately addressed.
- Review Major Chemical Accidents or Releases Root Cause Analyses and incident investigation reports that are submitted.
- Perform incident investigations including root cause analysis for selected Major Chemical Accidents or Releases.
- Perform hazard scoring for development projects associated with land use applications.
- Participate in unannounced inspections of industrial facilities.

In addition, both require public access to reports and incorporate community engagement requirements.

## **CARB & BAAQMD Regulate Air Monitoring**

There has been much discussion in Benicia about the need for a more robust air monitoring program. While neither the Contra Costa ISO nor the City of Richmond ISO address community air monitoring, there continues to be great strides in this arena by other agencies.

Air monitoring generally falls under the Bay Area Air Quality Management District (BAAQMD) and the California Air Resources Board (CARB). Both BAAQMD and CARB are currently making significant advances in required air monitoring for refineries. In 2016 BAAQMD adopted a new regulation (Regulation 12, Rule 15) which monitors and tracks refinery emissions and will directly impact air monitoring in our region.

In addition, in response to Assembly Bill 617, CARB established the Community Air Protection Program (CAPP). The program's focus is to reduce exposure in communities most impacted by air pollution.

Valero is now required to meet upcoming deadlines for implementing air monitoring in Benicia and has submitted their air monitoring plan to Bay Area Air Quality Management District and is awaiting their response.

**OPTIONS FOR COUNCIL CONSIDERATION:**

- Option 1: Direct staff to draft an Industrial Safety Ordinance to bring to Council for adoption. If Council directs staff to develop for implementation an ISO for Benicia, there are a number of activities that will be needed including the following:
  - **Engage expertise in preparing the draft ordinance.** Refinery regulation is a special expertise not held by City staff.
  - **Determine authority for implementation of adopted ISO.** If the City adopts an ISO, the County has notified staff that the CUPA has jurisdictional authority for refinery regulation.
  - **Determine City resources needed for implementation.** Additional staff may be needed to implement Council’s direction.
  
- Option 2: Direct staff to monitor Solano County’s implementation of Program 4. In this case, the activities of an Industrial Safety Ordinance for industrial facilities within the City will continue to be carried out by the Solano County’s CUPA as the agency required to carry out these activities under new regulations that went into effect on October 1, 2017.

**NEXT STEPS:**

Implement Council’s direction.

**ALTERNATIVE ACTIONS:**

Council may provide any direction to staff on this report that it determines.

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| <b>General Plan</b> | The overarching goal of the General Plan is Sustainability              |
|                     | Goal 4.1: Make community health and safety a high priority for Benicia. |
|                     | Goal 4.9: Ensure clean air for Benicia residents.                       |

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| <b>Strategic Plan</b> | Strategic Issue #1: Protecting Community Health and Safety                  |
|                       | Strategy #3: Provide a high state of preparedness for disasters/emergencies |
|                       | Strategy #5: Promote community and personal health                          |
|                       | Strategic Issue #2: Protecting and Enhancing the Environment                |
|                       | Strategy #4: Protect air quality  |

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| <b>CEQA<br/>Analysis</b> | The proposed action is not a Project per Section 15378 of the California Environmental Quality Act (CEQA), because it will not result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. |
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**Attachments:**

1. Mayor Patterson's amended two-step process request
2. Contra Costa County ISO
3. City of Richmond ISO
4. Comparison of Contra Costa County's ISO to Program 3 and new State Program 4 requirements
5. Benicia ISO Working Group Draft Ordinance
6. Letter from Valero

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