Statement of Facts.

ORDINANCE NO: 64

ORDINANCE TO ESTABLISH OCCUPATIONAL SAFETY AND HEALTH PROGRAM, DEVISE RULES AND REGULATIONS, AND TO PROVIDE FOR A DIRECTOR AND THE IMPLEMENTATION OF SUCH PROGRAM.

WHEREAS, in compliance with Public Chapter 561 of the General Assembly of the State of Tennessee for the year 1972, the City of (Name) LAKEWOOD hereby establishes the "Occupational Safety and Health Program for the Employees of the City of (Name) LAKEWOOD

NOW, THEREFORE,

SECTION 1. BE IT ORDAINED BY THE CITY OF LAKEWOOD (Name), that there be and is hereby created a safety and health program for the employees of the City of (Name) LAKEWOOD as follows:

TITLE:

This Section shall provide authority for establishing and administering the Occupational Safety and Health Program for the Employee of (City Name) Lakewood.

PURPOSE:

The City of LAKEWOOD (Name), in electing to establish and maintain an effective occupational safety and health program for its employees, shall:

(1) Provide a safe and health full place and condition of employment.

(2) Acquire, maintain and require the use of safety equipment, personal protective equipment and devices reasonable necessary to protect employees.

(3) Make, keep, preserve and make available to the State Commissioner of Labor, his designated representative or persons within the agency to whom such responsibilities have been delegated, adequate records of all occupational accidents and personal injuries for proper evaluation and necessary corrective action as required.

(4) Consult with the State Commissioner of Labor or his designated representative, with regard to the adequacy of the form and content of records.

(5) Consult with the State Commissioner of Labor or the State Commissioner of Public Health, as appropriate, regarding safety and health problems of the agency which are considered to be unusual or peculiar to the City and are such that they cannot be achieved under a standard promulgated by the State.

(6) Make an annual report to the State Commissioner of Labor to show accomplishments and progress of the total occupational safety and health program.

(7) Provide reasonable opportunity for the participation of employees in the effectuation of the objectives of this program, including the opportunity to make anonymous complaints concerning conditions or practices injurious to employee safety and health.

(8) Provide for education and training of personnel for the fair and efficient administration of occupational safety and health standards, and provide for education and notification of all employees of the existence of this program.

DEFINITIONS:

For the purpose of the program established pursuant to this Ordinance.

(a) "Commissioner of Labor" means the chief executive officer of Tennessee Department of Labor. This includes any person appointed, designated, or deputized to perform the duties or to exercise the powers assigned to the Commissioner of Labor.

(b) "Commissioner of Public Health" means the chief executive officer of the Tennessee Department of Public Health. This includes any person appointed, designated, or deputized to perform the duties or to exercise the powers assigned to the Commissioner of Public Health.

(c) "Employer" means the City, and shall include each administrative department, commission, board, division or other agency of the City.

(d) "Director of Safety and Health" means the chief executive officer designated by the City to perform duties or to exercise powers assigned so as to plan, develop, and administer the City's Safety and Health Program.

(e) "Inspector(s)" means the individual(s) appointed and designated by the Director of Safety and Health to conduct inspections provided for herein. If no such compliance inspector(s) is appointed, the inspections shall be conducted by the Director of Safety and Health.

(f) "Appointing Authority" means any city official or group of officials having legally designated powers of appointment, employment, or removal for a specific department, commission, board, division or other agency of the City.

(g) "Employee" means any person performing services for the City and listed on city payrolls either as part-time, seasonal, or permanent, full-time employees; provided, however, that such definition shall not include independent contractors, their agents, servants, and employees.

(h) "Person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives or any organized group of persons.

(i) "Standard" means an occupational safety and health standard promulgated by the Tennessee State Commissioner of Labor or the State Commissioner of Public Health which requires conditions or the adoption or the use of one or more practices, means, methods, operations or processes necessary or appropriate to provide safe and healthful employment and places of employment.

(j) "Imminent Danger" means any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through normal enforcement procedures.

(k) "Establishment" or workplace means a single physical location where business is conducted or where services or industrial operations are performed.

COVERAGE:

The provisions of the program shall apply to employees of each administrative department, commission, board, division or other agency of the City.

EMPLOYER'S RIGHTS AND DUTIES:

Rights and duties of the employer shall include, but are not limited to the following provisions:

(a) Employer shall furnish to each of his employees conditions of employment and a place of employment free from known and recognized hazards that are causing or are likely to cause death or serious injury or harm to employees.

(b) Employer shall comply with occupational safety and health standards or regulations promulgated pursuant to the State Occupational Safety and Health Act of 1972.

(c) Employer shall assist the State Commissioner of Labor and State Commissioner of Public Health in the performance of their monitoring duties by supplying necessary information to the Commissioners or to their respective assistants or deputies.

(d) Employer is entitled to participate in the development of standards by submission of comments on proposed standards, participation in hearings on proposed standards, or by requesting the development of standards on a given issue.

(e) Employer is entitled to request an order granting a variance from an Occupational Safety and Health Standard.

(f) Employer shall inspect all installations, departments, bureaus, and offices to insure the provision of this program are complied with and carried out.

(h) Employer shall notify and inform any employee, who has been or is being exposed in a biologically significant manner to harmful agents or material in excess of the applicable standard, of corrective action being taken by the City.

EMPLOYEES'S RIGHTS AND DUTIES:

Rights and duties of employees shall include, but are not limited to the following provisions:

(a) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this program which are applicable to his or her own actions and conduct.

(b) Each employee shall be notified by the placing upon bulletin boards, or other places of common passage, of any application for a temporary order granting a variance from any standard or regulation.

(c) Each employee shall be given the opportunity to participate in any hearing which concerns an application for a variance from a standard.

(d) Any employee may bring to the attention of the person in charge of the program any violation of the standards or other health or safety hazard.

(e) Any employee who has been exposed or is being exposed to toxic materials or harmful physical agents in concentrations or at levels in excess of that provided for by an applicable standard shall be notified by the employer and informed of such exposure and the corrective action being taken.

(f) Subject to regulations issued pursuant to this program, any employee or authorized representative of employees shall be given the right to request an inspection.

(g) No employee shall be discharged or discriminated against because such employee has filed any complaint or instituted or caused to be instituted any proceedings or inspection under or relating to this program. Any such charges of discrimination are subject to investigation by the Commissioner of Labor.

(h) Nothing in this section or any other provision of this program shall be deemed to authorize or require medical examination, immunization, or treatment for those who object thereto on religious grounds, except where such is necessary for the protection of the health or safety of others, and except when such medical examination is reasonably required for performance of a specified job.

STANDARDS AUTHORIZED:

The standards adopted by the City of LAKEWOOD (Name) are the State of Tennessee Safety and Health standards developed under Section 6 of the State Occupational Safety and Health Act of 1972.

VARIANCES FROM STANDARDS AUTHORIZED:

The City of LAKEWOOD (Name) may, upon written application to the State Commissioner of Labor or the State Commissioner of Public Health, request an order granting a temporary variance from any approved standards. Prior to requesting such temporary variance, the employer shall notify or serve notice to employees or interested parties and present them with an opportunity for a hearing. The posting of notice on the main bulletin board as designated by the City, shall be deemed sufficient notice to employees.

ABATEMENT:

The program will provide for administrative procedures for abateing hazard.

INSPECTION:

(a) In order to carry out the purposes of this program resolution, the Safety and Health Inspectors are authorized:

(1) To enter at any reasonable time any establishment, construction site, plant, or other area, workplace, or environment where work is performed by an employee of the City of (Name) LAKEWOOD and,

(2) To inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, processes, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any supervisor, operator, agent or employee working therein.

(b) The City of LAKEWOOD (Name) shall establish and maintain a system for collecting, maintaining and reporting safety and health data.

(c) The program shall comply with the record keeping regulations pursuant to the Tennessee Occupational and Safety Act of 1972.

(d) After this Ordinance has been enacted, the City of LAKEWOOD (Name), shall report within forty-eight (48) hours, either orally or in writing, to the Commissioner of Labor any accident which is fatal to one or more employees or which results in the hospitalization of five (5) or more employees.

ADMINISTRATION:

For the purposes of this Ordinance, the Mayor/City Manager has the authority to designate the Director of the Safety and Health Program to perform duties or to exercise powers assigned so as to plan, develop, and administer the City's Occupational Safety and Health Program.

FUNDING THE PROGRAM:

Sufficient funds for administering the program pursuant to this ordinance shall be made available as authorized by the budgeting authority.

CONFIDENTIALITY OF TRADE SECRETS OR PRIVILEGED INFORMATION:

(a) Compliance with any other law, statute or city ordinance which regulates safety and health in employment and places of employment shall not excuse the City or any city employee, or any other person from compliance with the provisions of this program.

(b) Compliance with any provisions of the program pursuant to this resolution or any standard or regulation promulgated pursuant to this program shall not excuse the City or any city employee, or any other person from compliance with any state law or city ordinance regulating and promoting safety and health unless such law or ordinance is specifically repealed.

SEVERABILITY:

SECTION 2. BE IT FURTHER ORDAINED that if any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invlaid or unconstitutional by any court of competnet jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

AMENDMENTS, ETC.:

SECTION 3, BE IT FURTHER ORDAINED that this ordinance shall take effect from and after the date it shall have been passed by the City Council, properly signed, certified, and has met all other legal requirements of the city, and as otherwise provided by law, the general welfare of the City requiring it.

Dated this 25 day of April, 1975.

H. Philip Sadler
City Attorney

STATE OF TENNESSEE, CITY OF LAKEWOOD

I, Mrs Louise Wooden, Recorder for the City, do hereby certify that the foregoing is a true and perfect copy of the original ordinance adopted by the City of LAKEWOOD, now file and of record in my office. WITNESS my hand and official seal, at office in LAKEWOOD, this 25 day of April A.D. 1975.

Mrs Louise Wooden Recorder