



Council Meeting: May 5, 2009

SUBJECT: ORDINANCE AMENDING CHAPTER 12.04 (SEWERAGE SYSTEM); CHAPTER 12.12 (SEWER USE REGULATIONS); AND CHAPTER 12.18 (ENFORCEMENT) OF TITLE 12 (WATER AND SEWERS) OF THE SUNNYVALE MUNICIPAL CODE RELATING TO REGULATIONS OF THE PUBLICLY OWNED TREATMENT WORKS
REPORT IN BRIEF

Amendment of Sunnyvale Municipal Code (SMC) Title 12 is necessitated by changes in the federal regulations for the National Pretreatment Program (40 CFR Part 403) and corrective actions required by the State Water Resources Control Board following a Pretreatment Compliance Audit (PCA) conducted in October 2007. All cities with an approved Pretreatment Program are audited annually for compliance with federal requirements.

The proposed changes will modify the City's legal authority under Title 12 and its Pretreatment Program, to incorporate required provisions in accordance with revisions to 40 CFR Part 403. These are regulations pertaining to wastewater being discharged to the Sunnyvale Water Pollution Control Plant, that are implemented by the Department of Public Works, Environmental Division, Pretreatment Program. All proposed modifications to the SMC and to the Pretreatment Program are based on the federal streamlining revisions to 40 CFR Part 403. The attached draft Ordinance includes only those sections that have changed. Where the section does not change, it will not be duplicated in the proposed Ordinance draft. Title 12 is available in its entirety on the city's website at: <http://qcode.us/codes/sunnyvale/>.

Staff is requesting that Council adopt the proposed ordinance amending Title 12. Chapters 12.04, 12.12, 12.18 of the Sunnyvale Municipal Code.

BACKGROUND

The revisions to the SMC are being incorporated based on the Pretreatment Compliance Audit conducted in October 2007 by the Regional Water Quality Control Board. The Audit Report dated February 22, 2008, includes required and recommended revisions to the SMC to ensure consistency with all federal requirements, and to have the necessary legal authority to apply and enforce section 307(b) and (c), and section 402(b)(8) of the Clean Water Act, concerning Pretreatment Standards and National Pollutant Discharge Elimination System (NPDES) requirements. The City has been implementing these regulations as

contained in 40 CFR Part 403 since they were promulgated in the early 1980's, however the Municipal Code did not reflect the specific authority to implement these regulations in an explicit manner, only by reference. The revisions proposed to Title 12 will directly reflect the same regulations contained in 40 CFR Part 403.

The proposed changes will not require a significant modification to the operation of the City's Pretreatment program, nor will the changes create significant additional requirements for the regulated industrial users, since these regulations have already been implemented into operational procedures in the City, but are now being formally codified with the proposed ordinance changes. The use of the term Publicly Owned Treatment Works (POTW) has been added and used throughout the proposed ordinance. The term POTW refers to not only the Water Pollution Control Plant (WPCP), but the collection and conveyance systems and equipment used to transport wastewater from industrial users to the WPCP. POTW is the term used by the Environmental Protection Agency (EPA) in the context of applicable Pretreatment regulations.

EXISTING POLICY

Sunnyvale Municipal Code Title 12, Chapters 12.04; Chapter 12.12; and 12.18.

DISCUSSION

Section 12.04. "Sewerage System" includes general purpose, terminology, and definitions applicable to all of Title 12 – Water and Sewers, and specifically section 12.12 and 12.18. This section, 12.04, is amended to be consistent with applicable federal regulations, definitions, and abbreviations. The changes proposed will also be consistent with the EPA Model Pretreatment Ordinance, and will keep the City's Pretreatment Program in compliance with state and federal requirements.

Section 12.18. Enforcement, is amended to include and reflect federal requirements for Pretreatment Program public participation, and provide the authority to comply with this requirement. Attachment H – Pretreatment Requirements, Provision 3 (iii) of the City's NPDES Permit, consistent with 40 CFR Part 403.8(f)(2)(viii), requires the City to publish annually (in a newspaper of general circulation that provides meaningful public notice within the jurisdiction) a list of industrial users who are in significant noncompliance with applicable standards as defined. In addition, Section 12.18 has been revised to demonstrate authority to issue notices of violation.

Sections 12.12.025, 12.12.026, 12.12.027, and 12.12.028 are revised and updated to more effectively operate the existing fats, oils, and grease (FOG) control program within the Pretreatment Program. The FOG control program is

an element of the City's Sanitary Sewer Management Plan (SSMP), required by the EPA to control sanitary sewer overflows; and thereby the discharge of sanitary waste into waters of the City or potential unsanitary conditions that could contribute to unhealthy and unsafe conditions.

The existing Municipal Code Sections 12.12.025 and .027 contain outdated references to past requirements; and the revised sections contain current requirements. Most changes to these sections are to clarify terms and update provisions that are no longer applicable, and have been added to a new section .026. In addition, some of the new language is from the California Plumbing Code, and was previously incorporated by reference. Specific language has been added for clarification and readability.

The new revised section 12.12.027 will add the option of filing an appeal for a variance to the requirements to install and maintain a grease interceptor as required in 12.12.026. Section 12.12.028 gives the City the authority to require food service facilities to comply with best management practices as determined applicable. This is not a new requirement, but a clarification of existing authority.

Section 12.12.030 has been updated to give the City specific authority to require other types of devices such as oil water separators, or oil and sand separators that are typically required by automotive repair facilities or car washes that discharge to the sanitary sewer system.

The City will be incorporating the federal requirement for monitoring waivers for pollutants not present. Revised SMC Sections 12.12.200(a)(6) and 12.12.150(d) authorize permits issued by the City to contain the process for seeking a waiver, as well as the specific waived pollutant as required by 40 CFR Part 403. Additionally, revised SMC Section 12.12.310(b), provides local authority to require a certification statement as part of the waiver process.

Other minor revisions have been made throughout Chapters 12.04, 12.12, and 12.18 to add clarity and consistency, and to further align these chapters with language contained in federal regulations, including language contained in the EPA Pretreatment Model Sewer Use Ordinance.

All proposed modifications to the SMC and to the Pretreatment Program based on the federal streamlining revisions to 40 CFR Part 403 are defined by EPA as "nonsubstantial" because they directly reflect revised federal requirements contained in 40 CFR Part 403.

The proposed modifications as outlined in this report have been submitted to the Regional Water Quality Control Board and approved. The SMC revisions

are necessary to remain in compliance with the City's NPDES permit no. CA0037621, Provision E.6. – Pretreatment Program. The City is required to implement and enforce its approved Pretreatment Program in accordance with Federal Pretreatment Regulations (40 CFR Part 403).

FISCAL IMPACT

There is no negative fiscal impact to either the City or to the industrial users anticipated as a result of these modifications. Both the City and its industrial users could expect to save money in the area of laboratory analysis, due to a new provision allowing for waiver of pollutants not present. The savings is expected to be minor and would be a result of decreased monitoring requirements.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

ALTERNATIVES

1. Adopt the proposed ordinance amending Title 12. Chapters 12.04, 12.12, 12.18 of the Sunnyvale Municipal Code to incorporate the required, and some optional provisions, in accordance with revisions to the National Pretreatment Program (40 CFR Part 403).
2. Adopt, with amendments, the proposed ordinance, amending Chapters 12.04, 12.12, 12.18 of Title 12 the Sunnyvale Municipal Code to incorporate the required, and some optional, provisions in accordance with revisions to 40 CFR Part 403.
3. Do not adopt the proposed ordinance amending Chapters 12.04, 12.12, 12.18 of Title 12 the Sunnyvale Municipal Code to incorporate the required, and some optional provisions in accordance with revisions to 40 CFR Part 403.

RECOMMENDATION

Staff recommends Alternative No. 1: Council adopt the proposed ordinance amending Title 12. Chapters 12.04, 12.12, 12.18 of the Sunnyvale Municipal Code to incorporate the required, and some optional provisions, in accordance with revisions to 40 CFR Part 403.

Approval of Alternative No. 1 will allow the city to be responsive to the recommendations provided in the Pretreatment Compliance Audit (PCA) conducted in October 2007 and to bring its Pretreatment Program up to date with requirements in federal regulations under 40 CFR Part 403.

Reviewed by:

Marvin Rose, Director, Public Works
Prepared by: Sarah Scheidt, Senior Industrial Waste Inspector
Lorrie Gervin, Environmental Division Manager

Approved by:

Gary M. Luebbers
City Manager

Attachments

- A. Proposed ordinance amending Title 12. Chapters 12.04, 12.12, and 12.18 of the Sunnyvale Municipal Code, relating to regulations of the Publicly Owned Treatment Works

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AMENDING CERTAIN SECTIONS OF CHAPTER 12.04 (SEWERAGE SYSTEM); CHAPTER 12.12 (SEWER USE REGULATIONS); AND CHAPTER 12.18 (ENFORCEMENT) OF TITLE 12 (WATER AND SEWERS) RELATING TO REGULATIONS OF THE PUBLICLY OWNED TREATMENT WORKS

THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 12.04 AMENDED. Section 12.04.010 (Purpose) Chapter 12 (Definitions) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.04.010. Purpose.

Chapters 12.04 through 12.18 set forth uniform requirements for users of the Publicly Owned Treatment Works (POTW) for the city of Sunnyvale and enables the city to comply with all applicable state and federal laws including the Clean Water Act (33 U.S.C. 1251 et seq.) and the General Pretreatment Regulations (40 CFR Part 403). The objectives of these chapters are:

- (a) To prevent the introduction of pollutants into the POTW that will interfere with its operation;
 - (b) To prevent the introduction of pollutants into the POTW that will pass through the POTW, inadequately treated, into receiving waters, or otherwise be incompatible with the POTW.
 - (c) To protect both the POTW personnel who may be affected by wastewater and sludge in the course of their employment and the general public;
 - (d) To enable the reuse and recycling of wastewater and sludge from the POTW;
 - (e) To provide for fees for the equitable distribution of the cost of operation, maintenance and improvements of the POTW; and
 - (f) To enable the city to comply with its National Pollutant Discharge Elimination System (NPDES) permit conditions, sludge reuse and disposal requirements, and any other federal or state laws to which the POTW is subject.
- Chapters 12.04 through 12.18 shall apply to all users of the POTW. These chapters
- (g) Authorize the issuance of wastewater discharge permits;
 - (h) Provide for monitoring, compliance and enforcement activities;
 - (i) Establish administrative review procedures;
 - (j) Require user reporting; and
 - (k) Provide for the setting of fees for the equitable distribution of costs resulting from the program established herein.

Chapters 12.04 through 12.18 apply to the city of Sunnyvale and to persons outside the city who are, by contract or agreement with the city, users of the city POTW. Except as otherwise provided herein, the director of public works shall administer, implement and enforce the provisions of these chapters. Any powers granted to or

duties imposed upon the director may be delegated by the director to other city personnel.

SECTION 2. CHAPTER 12.04 AMENDED. Section 12.04.020 of Chapter 12.04 (Sewerage System) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby repealed in its entirety.

SECTION 3. CHAPTER 12.04 AMENDED. Section 12.04.025 (Abbreviations) is added to Chapter 12.04 (Sewerage System) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code to read as follows:

12.04.025. Abbreviations

The following abbreviations, when used in this ordinance, shall have the designated meanings:

- BOD – Biochemical Oxygen Demand
- BMP – Best Management Practice
- BMR – Baseline Monitoring Report
- CFR – Code of Federal Regulations
- CIU – Categorical Industrial User
- COD – Chemical Oxygen Demand
- Degree C – degrees Celsius or degrees Centigrade
- Degree F – degrees Fahrenheit
- EPA – U.S. Environmental Protection Agency
- FOG – Fats Oils and Grease
- FSE – Food Service Establishment
- gpd – gallons per day
- GRD – Grease Removal Device
- IU – Industrial User
- mg/l – milligrams per liter
- NPDES – National Pollutant Discharge Elimination System
- POTW – Publicly Owned Treatment Works
- RCRA – Resource Conservation and Recovery Act
- SIU – Significant Industrial User
- SNC – Significant Noncompliance
- TSS – Total Suspended Solids
- USC – United States Code

SECTION 4. CHAPTER 12.04 AMENDED. Section 12.04.030 (Definitions) of Chapter 12.04 (Sewerage System) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.04.030. Definitions.

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this ordinance, shall have the meaning hereinafter designated.

(1) “Authorized” or “duly authorized representative of the user” means:

(a) If the user is a corporation:

(i) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(ii) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit [or general permit {optional}] requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively.

(c) If the user is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

(d) The individuals described in paragraphs (a) through (c), above, may designate a Duly Authorized Representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the city.

(2) "Beneficial uses" means uses of the waters of the city or state which may, or do, require protection against quality degradation thereof, including, but not necessarily limited to, waters for domestic, municipal, agricultural, industrial, power generation, recreation, aesthetic enjoyment, or navigation purposes, or for the protection and enhancement of fish, wildlife or other aquatic resources or reserves, and such other uses, both tangible and intangible, as are or may be specified by federal or state law as beneficial uses.

(3) "Best management practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 12.12.020 (a) and (b), and the local limits on wastewater in 12.12.120(c). BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

(4) "Building sewer or lateral" means a sewer conveying wastewater from the premises of any user to the city POTW.

(5) "Categorical industrial user" means an Industrial user subject to a categorical Pretreatment Standard or Categorical Standard.

(6) "Categorical pretreatment standard" or "categorical standard" means any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. section 1317) that apply to a specific category of users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

(7) "City" means the city of Sunnyvale.

(8) "Clean Water Act" means the Federal Water Pollution Control Act, as amended, 33 U.S.C. section 1251 et seq.

(9) "Commercial user" means any nonresidential user that the director determines will introduce primarily domestic sewage, or treated groundwater acceptable to the director, to the sewerage system. Classes of commercial users are:

(a) "Standard strength" commercial users are all commercial users unless their wastewater has the characteristics of low strength or high strength, as defined below.

(b) "Low strength" commercial users are:

(i) Laundromats;

(ii) Car washes;

(iii) Users who discharge groundwater to the sanitary sewer, or

(iv) Commercial businesses whose sanitary sewer discharges have total suspended solids less than or equal to 110mg/L and total organic carbon less than or equal to 75 mg/L, based on a minimum annual average of four random samples taken approximately quarterly by water pollution control plant staff, or any additional number of samples as determined to be necessary by the director to characterize the discharge.

(c) "High strength" commercial users are:

(i) Accommodation or food service establishments as defined by the North American Industry Classification System (NAICS) Sector 72, where food or beverages are served;

(ii) Wholesale bakeries;

(iii) Existing markets with garbage disposals, or

(iv) Commercial businesses whose sanitary sewer discharges have total suspended solids greater than or equal to 600 mg/L or total organic carbon greater than or equal to 500 mg/L, based on an annual average of a minimum of four random samples taken approximately quarterly by water pollution control plan staff, or any additional number of samples as determined to be necessary by the director to characterize the discharge.

(10) "Daily maximum" means the arithmetic average of all effluent samples for a pollutant collected during a calendar day.

(11) "Daily maximum limit" means the maximum allowable discharge limit of a pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where Daily Maximum Limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

(12) "Diluting waters" means noncontact cooling water, boiler blowdown, domestic sewage, groundwater, stormwater, surface drainage, reverse osmosis reject or potable waters which are not part of an industrial process and which do not contain priority pollutants but which are combined with industrial process wastewater prior to the monitoring point for industrial waste discharge.

(13) "Director" means the director of public works of the city, or his or her designees.

(14) "Environmental Protection Agency" or "EPA" means the U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, the Regional Administrator, or other duly authorized official of said agency.

(15) "Existing Source" means any source of discharge that is not a "New Source."

(16) "Fats, oils, and grease" or "FOG" or "oil and grease" means any compound detectable and measurable using approved analytical test procedures established in 40 CFR 136, as may be amended from time to time for the analysis of oil and grease. These detectable compounds may include petroleum hydrocarbons, vegetable oils, animal fats, waxes, soaps, greases and related compounds.

(17) "Food service establishment" or "FSE" means commercial or institutional establishments primarily engaged in activities of preparing, serving, or otherwise making food available for retail sale and/or consumption by the public such as restaurants, commercial kitchens or caterers, and those portions of the following facilities engaged in similar activities: hotels, schools, hospitals, and care institutions.

(18) "Grease removal device" means any device, unit, or installation for separating and retaining waterborne fats, oils and greases, or grease complexes as well as settleable solids prior to the discharge of wastewater to the sanitary sewer. All such installations, whether sub-surface or above ground, regardless of size, including sand and oil/water separators as well as two-compartment sumps, are referred to as grease removal devices.

(19) "Grease trap" means a device designed to retain FOG from one to a maximum of four fixtures. Such traps are typically compact under-the-sink units near food preparation areas.

(20) "Grease interceptor" means a structure or device designed to retain FOG of at least 750 gallon capacity to serve one or more fixtures and which shall be remotely located. These devices are often below-ground units in outside areas and are built as two or three chamber baffled tanks.

(13) – (14) [Renumber (21) – (22), consecutively; text unchanged.]

(23) "Indirect Discharge" or "Discharge" means the introduction of pollutants into the POTW from any nondomestic source.

(24) "Industrial waste" means the waste and wastewater from any production, manufacturing or processing operation of whatever nature including institutional and commercial operations where wastewater is used for the removal of significant quantities of waste other than from domestic sewage from premises connected to the city's POTW.

(25) "Interference" means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

(a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

(b) Is a cause of a violation of any requirement of the city's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

(26) "Interim wastewater discharge permit" is an approval to commence or continue a wastewater discharge to the POTW until conditions are met to obtain a wastewater discharge permit.

(27) "Local limit" means specific discharge limits developed and enforced by the City upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in Chapter 12.12.020.

(28) "Medical waste" means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

(29) "National Pollution Discharge Elimination System permit" or "NPDES permit" means order no. CA0037621 as adopted by the San Francisco Bay Regional Water Quality Control Board under Section 402 of the Act and any related amendments or orders.

(30) "New source"

(a) Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act that will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:

(i) The building, structure, facility, or installation is constructed at a site at which no other source is located; or

(ii) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an Existing Source; or

(iii) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an Existing Source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the Existing Source, should be considered.

(b) Construction on a site at which an Existing Source is located results in a modification rather than a New Source if the construction does not create a new building, structure, facility, or installation meeting the criteria of Section (1)(b) or (c) above but otherwise alters, replaces, or adds to existing process or production equipment.

(c) Construction of a New Source as defined under this paragraph has commenced if the owner or operator has:

(i) Begun, or caused to begin, as part of a continuous onsite construction program

(A) any placement, assembly, or installation of facilities or equipment; or

(B) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(ii) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation

within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

(31) "Noncontact cooling water" means water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

(32) "Pass through" means a discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the city's NPDES permit, including an increase in magnitude or duration of a violation.

(33) "Person" means any individual, partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Federal, State, and local governmental entities.

(34) "pH" means a measure of the acidity or alkalinity of a solution, expressed in standard units.

(35) "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

(36) "Premises" means a parcel of real estate, or portion thereof, including any improvements thereon, which is determined by the director to be a single user for purposes of receiving, using and paying for service.

(37) "Pretreatment" or "treatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. The reduction or alteration can be obtained by physical, chemical or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutant unless allowed by an applicable Pretreatment Standard.

(38) "Pretreatment facility" means any works or device for treatment, control or flow limitation of sewage or industrial waste, prior to discharge into the city POTW.

(39) "Pretreatment requirements" means any substantive or procedural requirement related to pretreatment imposed on a user, other than a Pretreatment Standard.

(40) "Pretreatment standards" or "standards" means prohibited discharge standards, categorical Pretreatment Standards, and Local Limits.

(41) "Process wastewater" means any water which, during manufacturing or processing, comes into contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

(42) "Prohibited discharge standards" or "Prohibited Discharges" means absolute prohibitions against the discharge of certain substances; these prohibitions appear in Section 12.12.020 of this ordinance.

(43) "Publicly Owned Treatment Works" or "POTW" means a treatment works, as defined by section 212 of the Act (33 U.S.C. section 1292), which is owned by the City. This definition includes any devices equipment or sewerage systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances, which convey wastewater to a treatment plant.

(44) "Reclaimed or recycled water" means water which, as a result of treatment of waste, is suitable for beneficial use that would not otherwise occur.

(45) "Residential user" means a user whose premises are for residential purposes and thus discharge only domestic sewage.

(46) Sample Types.

(a) "Grab sample" means a single sample collected over a period of time not exceeding 15 minutes, taken at a particular time and place which represents the composition of the wastewater only at that time and place.

(b) "Composite sample" means a flow-proportional or time-proportioned sample collected manually or automatically either discretely or continuously. For manual compositing, a minimum of four (4) individual samples that when combined and mixed form one representative sample that is analyzed to determine the conditions during a specific period.

(47) "Sanitary sewer" or "sewer" means a pipe or conduit which carries domestic sewage and/or industrial wastes and to which storm, surface, and groundwaters are not intentionally admitted. A city sewer or public sewer is any sewer located within an easement or public right-of-way and which is maintained by the city and part of the POTW.

(48) "Sewerage system" means all sewers, facilities and appurtenances owned or operated by the city for carrying, collecting, pumping, treatment and disposal of waste and wastewater, including the water pollution control plant, and POTW.

(49) "Significant Industrial User (SIU)" means:

(a) An Industrial User subject to categorical Pretreatment Standards; or

(b) An Industrial User that:

(i) Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater);

(ii) Contributes process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

(iii) Is designated as such by the City on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement.

(50) "Significant noncompliance" means industrial user violations which meet one or more of the following criteria:

(a) Chronic violations of wastewater discharge limits, defined as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six- (6-) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including those defined in Chapter 12.12 of this ordinance;

(b) Technical Review Criteria (TRC) violations, defined as those in which thirty-three (33%) percent or more of wastewater measurements taken for each pollutant parameter during a six- (6-) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including those defined in Chapter 12.12 of this ordinance, multiplied by the applicable criteria (TRC = 1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);

(c) Any other violation of a Pretreatment Standard or Requirement as defined by Chapter 12.12 of this ordinance that the director determines has caused, alone or in combination with other discharges, Interference or Pass Through, including endangering the health of POTW personnel or the general public;

(d) Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the director's exercise of its emergency authority to halt or prevent such a discharge;

(e) Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in an individual wastewater discharge permit [or a general permit {optional}] or enforcement order for starting construction, completing construction, or attaining final compliance;

(f) Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(g) Failure to accurately report noncompliance; or

(h) Any other violation(s), which may include a violation of Best Management Practices, which the director determines will adversely affect the operation or implementation of the local pretreatment program.

(51) "Sludge" means the settleable solids segregated from liquid during wastewater treatment.

(52) "Slug Load" or "Slug Discharge" means any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in Section 12.12.020 of this ordinance. A Slug Discharge is any Discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, Local Limits or Permit conditions.

(53) "Storm sewer" means a sewer that is designed to carry stormwater and surface water, or drainage.

(54) "User" or "Industrial User" means a source of indirect discharge.

(55) "User classification" means a classification of user based on the North American Industry Classification System (NAICS), prepared by the United States Executive Office of Management and Budget.

(56) "Waste" means domestic sewage and any and all other waste substances, liquid, solid, gaseous or radioactive, associated with human habitation, or of human or animal origin, or from or related to any producing, manufacturing or processing operation of whatever nature, including such waste placed within containers of whatever nature prior to, and for purposes of, disposal.

(57) "Wastewater" means liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.

(58) "Wastewater constituents and characteristics" means the individual chemical, physical, bacteriological and radiological parameters, including volume and flow rate and such other parameters that serve to define, classify or measure the contents, quality, quantity and strength of wastewater.

(59) "Waters of the state" means any water, surface or underground, including saline waters within the boundaries of the state.

(60) "Wastewater Treatment Plant" or "Treatment Plant" means that portion of the POTW which is designated to provide treatment of municipal sewage and industrial waste, and production of recycled water for reuse. Also known as the Sunnyvale Water Pollution Control Plant.

SECTION 5. CHAPTER 12.12 AMENDED. Section 12.12.012 (Approval of Pretreatment Facility) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.012. Pretreatment facilities.

Users shall provide wastewater treatment as necessary to comply with this ordinance and shall achieve compliance with all categorical Pretreatment Standards, Local Limits, and the prohibitions set out in Section 12.12.020 of this ordinance within the time limitations specified by EPA, the State, or the director, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the director for review, and shall be acceptable to the director before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the city under the provisions of this ordinance.

SECTION 6. CHAPTER 12.12 AMENDED. Section 12.12.014 (National Pretreatment Standards) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.014. National Categorical Pretreatment Standards.

Users must comply with the categorical Pretreatment Standards found at 40 CFR Chapter I, Subchapter N, Parts 405-471.

(a) When wastewater subject to a categorical Pretreatment Standard is mixed with wastewater not regulated by the same Standard, the director shall impose an alternate limit utilizing the combined wastestream formula in accordance with 40 CFR 403.6(e).

SECTION 7. CHAPTER 12.12 AMENDED. Section 12.12.020 (Prohibitions on Discharges) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.020. Prohibitions on discharges.

(a) General Prohibitions. No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes Pass Through or Interference. These general prohibitions apply to all Users of the POTW whether or not they are subject to categorical Pretreatment Standards or any other National, State, or local Pretreatment Standards or Requirements.

(b) Specific Prohibitions. No user shall introduce or cause to be introduced into the POTW the following:

(1) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140 degrees F (60 degrees C) using the test methods specified in 40 CFR 261.21;

(2) Wastewater having a pH less than 6.0 or greater than 10.5, or otherwise causing corrosive structural damage to the POTW;

(3) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in Interference with the POTW;

(4) Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair;

(5) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

(6) Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating the city's NPDES permit;

(7) Trucked or hauled pollutants, except at discharge points designated by the director in accordance with Section 12.12.110 of this ordinance;

(8) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause Interference with the POTW;

(9) Wastewater having a temperature greater than 140 degrees F (60 degrees C), or which will inhibit biological activity in the treatment plant resulting in Interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104 degrees F (40 degrees C);

(10) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause Interference or Pass Through;

(11) Sludges, screenings, or other residues from the pretreatment of industrial wastes;

(12) Medical wastes, except as specifically authorized by the director in an individual wastewater discharge permit;

(13) Wastewater containing any radioactive wastes or isotopes except in compliance with applicable State or Federal regulations;

(14) Hazardous waste(s) as defined in Chapter 8.16.020.

SECTION 8. CHAPTER 12.12 AMENDED. Section 12.12.025 (Grease Disposal Prohibited) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.025. Fats, oils, and grease disposal prohibited.

It is unlawful for any person to dispose of any FOG, or cause any FOG to be disposed, by discharge into any drainage piping, by discharge into any POTW or private sanitary sewer, by discharge into any storm drainage system, or by discharge to any land, street, public way, river, stream or other waterway. No user shall discharge or cause to be discharged into the sewer system FOG that accumulates and/or causes or contributes to blockages in the POTW or at the sewer system lateral, which connects the user to the POTW.

SECTION 9. CHAPTER 12.12 AMENDED. Section 12.12.27 (Grease Removal Device Required) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.026. Grease removal device requirements.

(a) Grease Removal Device (GRD) Required - All food service establishments (FSEs), and any user with one or more FOG generating activities, shall install, operate and maintain a GRD of a type, design, and capacity approved by the city. GRD sizing and installation shall conform to the Plumbing Code for the city. GRDs, or similar treatment devices, shall be required of commercial car washes, commercial trash enclosures, or other commercial and industrial facilities when deemed necessary by the director.

(b) Maintenance and use - All GRDs shall be kept in good repair, and shall be maintained in continuous operation. The contents of all GRDs shall be removed periodically as needed to prevent violations of this chapter, or at a minimum frequency of every six months. If it is determined by the city that mainline flow restriction, e.g., a grease blockage or an obstruction, has resulted from the inadequate cleaning or maintenance of a user's GRD, or if in the opinion of the city a need for increased GRD maintenance frequency exists, the city, at its discretion, may require of a user a minimum routine cleaning frequency of less than every six months.

(1) Grease interceptor requirements

Grease interceptors shall be maintained in efficient operating condition by periodic removal of the full content of the interceptor at a minimum frequency of every six months.

(2) Grease trap requirements

(i) Grease traps shall be maintained in efficient operating condition by periodic removal of the full contents of the grease trap, or at a minimum frequency of every six months. No such collected FOG shall be introduced into any drainage piping, or public or private sewer.

(ii) No food waste disposal unit or dishwasher shall be connected to or discharge into a grease trap.

(iii) Wastewater in excess of one hundred-forty (140) degrees F shall not be discharged into a grease trap.

(c) Record Keeping - All maintenance activities, including FOG removal, shall be documented and records retained at the facility showing the date

of removal, the approximate amount removed and the disposition of the removed contents. Maintenance records shall be retained for a period of three years, and shall be available for inspection by the director.

(d) The City reserves the right to require repairs to, or replacement of, any GRD at the User's expense, if in the opinion of the director such repairs, or replacement, are necessary to prevent violations of this chapter. The city will provide the user written notification of the requirement which will include a compliance timeline.

SECTION 10. CHAPTER 12.12 AMENDED. Section 12.12.27 (Variance from Grease Interceptor Requirement) and Section 12.12.28 (Requirements for Food Service Establishment Best Management Practices) are added to Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code to read as follows:

12.12.027. Variance from grease interceptor requirement.

(a) Grease interceptors required under section 12.12.026 shall be installed unless the city authorized the installation of a grease trap or other alternative GRD after determining that the installation of a grease interceptor would not be feasible due to space constraints or other considerations. The facility bears the burden of demonstrating that the installation of a grease interceptor is not feasible and that the variance will not lead to violations of this ordinance. Any FSE granted a variance from a grease interceptor requirement shall implement Best Management Practices per Section 12.12.028 such that an equivalent level of treatment is achieved.

(b) A FSE may request a change in the maintenance frequency specified in section 12.12.026(b)(1). The FSE has the burden of responsibility to demonstrate that the requested change in frequency reflects actual operating conditions based on the average FOG accumulation over time and meets the requirements of section 12.12.026(b).

(c) Any user seeking a variance pursuant to 12.12.027 (a) or (b) shall submit an appeal in accordance with 12.18.080 that addresses the following:

- (1) Facility name, address, facility manager's name and property owner.
- (2) The reason for the appeal to the requirement for the maintenance or installation of a grease interceptor.
- (3) Explaining your grease generating activities. Provide information regarding the use of fats, oil, and grease in the food/food preparation. For example, sources of fats, oils and grease would be from meat products, dairy products, cooking oil, butter and lard.
- (4) The spatial constraints, if any, affecting the grease removal device installation, including the site layout of the kitchen, building, the surrounding buildings and relevant features (parking lots, sidewalks, kitchen equipment, sinks, etc.). Additionally, utility supply lines, utility mains (electrical, gas, water, sanitary and storm sewers), and city setbacks where no installation would be allowed must be identified to scale in the submittal.
- (5) The distance from each feasible area for installation.
- (6) Costs of moving existing utilities (normal grease removal device installation costs are not to be considered).

- (7) Contacts for verifying information provided by other departments, utilities, and agencies.
- (8) Sizing calculations based on the 2007 Uniform Plumbing Code
- (9) Documentation of Best Management Practices that shall be implemented in lieu of treatment.
- (10) Any other additional information that may benefit the appeals process.

12.12.028. Requirements for food service establishment best management practices.

All FSEs shall implement Best Management Practices identified by the director as appropriate to minimize the discharge of FOG to the POTW.

SECTION 11. CHAPTER 12.12 AMENDED. Section 12.12.030 (Special Treatment Facilities or Measures) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.030. Additional Pretreatment Measures.

(a) Whenever deemed necessary, the director may require Users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific points of connection to the POTW, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the User's compliance with the requirements of this ordinance.

(b) The director may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. An individual wastewater discharge permit may be issued solely for flow equalization.

(c) Grease, oil, and sand interceptors shall be provided when, in the opinion of the director, they are necessary for the proper handling of wastewater containing excessive amounts of grease, oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of a type and capacity approved by the director, and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired by the user at their expense

(d) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

SECTION 12. CHAPTER 12.12 AMENDED. Section 12.12.040 (Discharge and Threatened Discharge into Storm Drain Prohibited) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby repealed in its entirety.

SECTION 13. CHAPTER 12.12 AMENDED. Section 12.12.060 (Prohibition on Use of Diluting Waters) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.060. Prohibition on use of diluting waters.

No user shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable Pretreatment Standard or Requirement. The director may impose mass limitations on users who are using dilution to meet applicable Pretreatment Standards or Requirements, or in other cases when the imposition of mass limitations is appropriate.

SECTION 14. CHAPTER 12.12 AMENDED. Section 12.12.080 (Prohibitions on Radioactive Wastes) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby repealed in its entirety.

SECTION 15. CHAPTER 12.12 AMENDED. Section 12.12.110 (Prohibition on Holding Tank Wastes) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.110. Prohibition on holding tank wastes.

(a) Holding tank waste may be introduced into the POTW only at locations designated by the director, and at such times as are established by the director. Such waste shall not violate Section 12.12.120 of this ordinance or any other requirements established by the city. The director may require waste haulers to obtain individual wastewater discharge permits.

(b) The director may require haulers of industrial waste to obtain wastewater discharge permits. The director may require generators of hauled industrial waste to obtain wastewater discharge permits. The director also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this ordinance.

(c) Industrial waste haulers may discharge loads only at locations designated by the director. No load may be discharged without prior consent of the director. The director may collect samples and perform wastewater analysis of each hauled load to ensure compliance with applicable local limits for discharge in Section 12.12.120 and this ordinance. The director may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.

(d) Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

SECTION 16. CHAPTER 12.12 AMENDED. Section 12.12.115 (Copper-based Biocides) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.115. Copper-based biocides.

(a) It is unlawful to discharge, dispose of or add to the POTW system or to the storm drain system any substance containing copper greater than five percent copper by weight, to control roots or for any other purpose.

(b) It is unlawful to use any copper-based products in cooling towers, for the purpose of a biocide.

SECTION 17. CHAPTER 12.12 AMENDED. Section 12.12.118 (Collection of Samples) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.118. Collection of samples.

Samples collected to satisfy reporting requirements must be obtained through appropriate sampling and analysis performed during the reporting period and be representative of conditions occurring during the reporting period.

(a) Except as indicated in subsection (b) and (c) of this section, the user must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the director. Where time-proportional composite sampling or grab sampling is authorized by the city, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the city, as appropriate.

(b) Grab samples shall be collected for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds.

(c) For sampling required in support of baseline monitoring and 90-day compliance reports required in Section 12.12.150, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the director may authorize a lower minimum. For periodic compliance reports required in Section 12.12.150, the industrial user is required to collect the number of grab samples necessary to assess and assure compliance by industrial users with applicable Pretreatment Standards and Requirements.

SECTION 18. CHAPTER 12.12 AMENDED. Section 12.12.120 (Local Limits for Wastewater) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.120. Local limits for wastewater.

(a) The director is authorized to establish Local Limits pursuant to 40 CFR 403.5(c).

(b) The director may develop Best Management Practices (BMPs), by ordinance or in individual wastewater discharge permits, to implement Local Limits and the prohibitions on discharge in Section 12.12.020.

(c) The following pollutant limits are established to protect against Pass Through and Interference. No person shall discharge to the POTW wastewater containing in excess of the following:

Pollutant	Maximum Concentration Grab Sample (Milligrams per Liter)	Maximum Concentration Composite Sample (Milligrams per Liter)
Copper	0.7 mg/l	0.5 mg/l
Nickel	0.5 mg/l	0.25 mg/l

Maximum Concentration Allowable¹ Pollutant (Milligrams per Liter)	
Antimony	1.0 mg/l
Arsenic	0.3 mg/l
Barium	1.0 mg/l
Beryllium	0.5 mg/l
Cadmium	0.1 mg/l
Chlorinated hydrocarbons used for control of plants, insects, etc.	0.02 mg/l
Chromium, total	1.7 mg/l
Cobalt	1.0 mg/l
Cresols	2.0 mg/l
Cyanides	0.5 mg/l
Lead	0.5 mg/l
Mercury	0.01 mg/l
Fats, Oils and Grease (total)	300 mg/l
pH	6.0 to 10.5 su
Phenols ²	1.0 mg/l
Selenium	1.0 mg/l
Silver	0.2 mg/l
Total toxic organics ³	1.0 mg/l
Zinc	1.48 mg/l

¹ Applicable to samples collected as either grab or composite. All concentrations for metallic substances are for total metal.

² Phenols defined by test procedures in 40 CFR 136.

³ Total toxic organics, as defined under 40 CFR Part 413.02(i), but excluding phenolic compounds.

(d) Compliance with the TTO limit is verified by monitoring, if deemed necessary by the director, by analyzing only for those pollutants that the director has determined may reasonably expected to be present.

(e) Effluent limitations promulgated as categorical standards, 40 CFR Chapter 1, Subchapter N and 40 CFR 403.6 shall apply in any instance where they are more stringent than those in this chapter. The local limits in this chapter may be supplemented with more stringent limitations pursuant to Section 12.12.200 if the director determines that the limitations in subsection (a), (b) or (c) above may not be sufficient to protect the operation of the sewerage system or to enable the water pollution control plant to comply with water quality standards or effluent limitations specified in the city's NPDES permit.

SECTION 19. CHAPTER 12.12 AMENDED. Section 12.12.150 (Discharge Reports) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.150. Reporting Requirements.

(a) **Baseline Monitoring Reports**

(1) Within either one hundred eighty (180) days after the effective date of a categorical Pretreatment Standard, or the EPA final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing Categorical Industrial Users currently discharging to or scheduled to discharge to the POTW shall submit to the director a report which contains the information listed in paragraph (2), below. At least ninety (90) days prior to commencement of their discharge, New Sources, and sources that become Categorical Industrial Users subsequent to the promulgation of an applicable categorical Standard, shall submit to the director a report which contains the information listed in paragraph (2), below. A New Source shall report the method of pretreatment it intends to use to meet applicable categorical Standards. A New Source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

(2) Users described above shall submit the information set forth below.

(i) All information required in Section 12.12.160(a)(1), (a)(3), (a)(4), and (a)(11).

(ii) Measurement of pollutants.

(A) The user shall provide the information required in Section 12.12.160(a)(13)(i) through (iv);

(B) The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph;

(C) Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula in 40 CFR 403.6(e) to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e) this adjusted limit along with supporting data shall be submitted to the city;

(D) Sampling and analysis shall be performed in accordance with Section 12.12.118;

(E) The director may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;

(F) The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant Discharges to the POTW.

(3) Compliance Certification A statement, reviewed by the User's Authorized Representative as defined in Section 12.04.030(1) and certified

by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance and/or additional pretreatment is required to meet the Pretreatment Standards and Requirements.

(4) Compliance Schedule. If additional pretreatment and/or operations and maintenance will be required to meet the Pretreatment Standards, the shortest schedule by which the user will provide such additional pretreatment and/or operations and maintenance must be provided. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard. A compliance schedule pursuant to this Section must meet the requirements set out in Section 12.12.150(b) of this ordinance.

(5) Signature and Report Certification. All baseline monitoring reports must be certified in accordance with Section 12.12.310 of this ordinance and signed by an Authorized Representative as defined in Section 12.04.030(1).

(b) Compliance Schedule Progress Reports

The following conditions shall apply to the compliance schedule required by Section 12.12.150(a)(4) of this ordinance:

(1) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable Pretreatment Standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);

(2) No increment referred to above shall exceed nine (9) months;

(3) The user shall submit a progress report to the director no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and

(4) In no event shall more than nine (9) months elapse between such progress reports to the director.

(c) Reports on Compliance with Categorical Pretreatment Standard Deadline

Within ninety (90) days following the date for final compliance with applicable categorical Pretreatment Standards, or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any user subject to such Pretreatment Standards and Requirements shall submit to the director a report containing the information described in Section 12.12.160(a)(12) and (14) and 12.12.150(a)(2)(ii) of this ordinance. All compliance reports must be signed and certified in accordance with Section 12.12.310 of this ordinance. All sampling will be done in conformance with Section 12.12.118.

(d) Periodic Compliance Reports

(1) Except as specified in paragraph (2) below, all Significant Industrial Users must, at a frequency determined by the director submit no less than twice per year on dates specified reports indicating the nature, concentration of pollutants in the discharge which are limited by Pretreatment Standards and the

measured or estimated average and maximum daily flows for the reporting period. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the user must submit documentation required by the director or the Pretreatment Standard necessary to determine the compliance status of the user.

(2) The director may authorize an industrial user subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by a categorical Pretreatment Standard if the industrial user has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the industrial user. This waiver is subject to the following conditions:

(i) The waiver may be authorized where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical Standard and otherwise includes no process wastewater.

(ii) The monitoring waiver is valid only for the duration of the effective period of the individual wastewater discharge permit, but in no case longer than 5 years. The user must submit a new request for the waiver before the waiver can be granted for each subsequent individual wastewater discharge permit. See Section 12.12.160(a)(14).

(iii) In making a demonstration that a pollutant is not present, the industrial user must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.

(iv) The request for a monitoring waiver must be signed in accordance with Section 12.04.030(1), and include the certification statement in Section 12.12.310(a).

(v) Non-detectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

(vi) Any grant of the monitoring waiver by the director must be included as a condition in the user's permit. The reasons supporting the waiver and any information submitted by the user in its request for the waiver must be maintained by the director for 3 years after expiration of the waiver.

(vii) Upon approval of the monitoring waiver and revision of the user's permit by the director, the industrial user must certify on each report with the statement in Section 12.12.310(b), that there has been no increase in the pollutant in its wastestream due to activities of the industrial user.

(viii) In the event that a waived pollutant is found to be present or is expected to be present because of changes that occur in the user's operations, the user must immediately: Comply with the monitoring requirements of Section 12.12.150(d)(1), or other more frequent monitoring requirements imposed by the director, and notify the director.

(ix) This provision does not supersede certification processes and requirements established in categorical Pretreatment Standards, except as otherwise specified in the categorical Pretreatment Standard.

(3) All periodic compliance reports must be signed and certified in accordance with Section 12.12.310 of this ordinance.

(4) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

(5) If a user subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the director, using the procedures prescribed in Section 12.12.118 of this ordinance, the results of this monitoring shall be included in the report.

(e) Monitoring and analysis to demonstrate continued compliance. The reports required in paragraphs (a), (b), (c), and (d) of this section shall contain the results of sampling and analysis of the Discharge, including the flow and the nature and concentration, or production and mass where requested by the POTW, of pollutants contained therein which are limited by the applicable Pretreatment Standards. This sampling and analysis may be performed by the POTW in lieu of the industrial user. Where the POTW performs the required sampling and analysis in lieu of the industrial user, the user will not be required to submit the compliance certification required under paragraphs (a)(5) and (c) of this section. In addition, where the POTW itself collects all the information required for the report, including flow data, the industrial user will not be required to submit the report.

(f) Reports from Unpermitted Users

All users not required to obtain an individual wastewater discharge permit shall provide appropriate reports to the director as the director may require.

SECTION 20. CHAPTER 12.12 AMENDED. Section 12.12.155 (Notice of Violation-Repeat Sampling and Reporting) is added to Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code to read as follows:

12.12.155. Notice of Violation/Repeat Sampling and Reporting

(a) If sampling performed by a user indicates a violation, the user must notify the director within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis of the process wastewater at the same point of discharge and submit the results of the repeat analysis to the director within thirty (30) days after becoming aware of the violation.

(b) If the city performed the sampling and analysis in lieu of the industrial user, the city will perform the repeat sampling and analysis unless it notifies the user of the violation and requires the user to perform the repeat sampling and analysis. Resampling and analysis for the pollutant in violation by the industrial user is not required if:

(1) The city performs sampling at the user's facility at least once a month at the same point of discharge, or

(2) If the city performs sampling of the same process wastewater between the time when the initial sampling was conducted and the time when the user or the city receives the results of the sampling, or

(3) If the city has performed the sampling and analysis in lieu of the industrial user.

SECTION 21. CHAPTER 12.12 AMENDED. Section 12.12.160 (Wastewater Discharge Permit Application) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.160. Wastewater discharge permit application.

(a) All users required to obtain an individual wastewater discharge permit must submit a permit application. The director may require users to submit all or some of the following information as part of a permit application.

(1) Name and address of the facility, including the name of the operator and owner;

(2) Contact information, description of activities, facilities, and plant production processes on the premises;

(3) A list of any environmental control permits held by or for the facility;

(4) A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram, which indicates points of discharge to the POTW from the regulated processes;

(5) Types of wastes generated, and a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;

(6) Number and type of employees, and hours of operation, and proposed or actual hours of operation;

(7) Type and amount of raw materials processed (average and maximum per day);

(8) Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, floor drains, and appurtenances by size, location and elevation, and all points of discharge;

(9) Time and duration of discharge;

(10) The location for monitoring all wastes covered by the permit;

(11) Flow measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in Section 12.12.014(a).

(12) Wastewater constituents and characteristics including but not limited to those listed in Section 12.12.120(e), as determined by a laboratory certified by the California Department of Public Health, Environmental Laboratory Accreditation Program;

(13) Measurement of Pollutants

(i) The categorical Pretreatment Standards applicable to each regulated process and any new categorically regulated processes for Existing Sources.

(ii) The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the Standard or by the director, of regulated pollutants in the discharge from each regulated process.

(iii) The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 12.12.254 of this ordinance. Where the Standard requires compliance with a BMP or pollution prevention alternative, the user shall submit documentation as required by the director or the applicable Standards to determine compliance with the Standard.

(iv) Sampling must be performed in accordance with procedures set out in Section 12.12.118 of this ordinance;

(14) Any requests for a monitoring waiver (or a renewal of an approved monitoring waiver) for a pollutant neither present nor expected to be present in the discharge based on Section 12.12.150 (d)(2).

(15) Any other information as may be deemed by the director to be necessary to evaluate the permit application.

(b) The city will evaluate the data furnished by the user and may require additional information. After evaluation and approval of all the data required, the director may issue a wastewater discharge permit, which may be subject to specific terms or conditions provided therein. The holder of any permit issued hereunder shall be subject at all times to all applicable federal, state, and local laws and regulations. At no time and in no way, shall the holder of any permit acquire, or be regarded as having acquired, a vested or continuing right to maintain, or to have continued, any connection to the city POTW.

SECTION 22. CHAPTER 12.12 AMENDED. Section 12.12.165 (Application Signatories and Certifications) is added to Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code to read as follows:

12.12.165 Application Signatories and Certifications

(a) All wastewater discharge permit applications, user reports and certification statements must be signed by an Authorized Representative of the user and contain the certification statement in Section 12.12.310.

(b) If the designation of an Authorized Representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new written authorization satisfying the requirements of this Section must be submitted to the director prior to or together with any reports to be signed by an Authorized Representative.

SECTION 23. CHAPTER 12.12 AMENDED. Section 12.12.180 (Wastewater Discharge Permits) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.180. Wastewater discharge permit requirement.

(a) No Significant Industrial User shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the director, except that a Significant Industrial User that has filed a timely application pursuant to Section 12.12.185 of this ordinance may continue to discharge for the time period specified therein.

(b) The director may require other Users to obtain a wastewater discharge permit as necessary to carry out the purpose of this ordinance.

(c) The holders of any permit issued hereunder shall be subject at all times to all applicable federal, state and local laws and regulations. At no time and in no way, shall the holder of any permit acquire, or be regarded as having acquired, a vested or continuing right to maintain, or to have continued, any connection to the city POTW.

(d) Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this ordinance and subjects the wastewater discharge permittee to the sanctions set out in Sections 12.18.010 through 12.18.140 of this ordinance. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all Federal and State Pretreatment Standards or Requirements or with any other requirements of Federal, State, and local law.

SECTION 24. CHAPTER 12.12 AMENDED. Section 12.12.185 (Wastewater Discharge Permit: Existing Connections) and Section 12.12.187 (Wastewater Discharge Permit: New Connections) are added to Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code to read as follows:

12.12.185. Wastewater discharge permit: existing connections

Any user required to obtain a wastewater discharge permit who was discharging wastewater into the POTW prior to the effective date of this ordinance and who wishes to continue such discharges in the future, shall be subject to any provisions contained in a permit periodically issued by the director for the time specified in the permit.

12.12.187. Wastewater discharge permit: new connections

Any user required to obtain a wastewater discharge permit who proposes to begin or recommence discharging into the POTW must obtain such permit prior to the beginning or recommencing of such discharge. An application for this wastewater discharge permit, in accordance with Section 12.12.160 of this ordinance, must be filed at least 90 days prior to the date upon which any discharge will begin or recommence.

SECTION 25. CHAPTER 12.12 AMENDED. Section 12.12.190 (Notification Requirements – Changed Conditions) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.190. Notification requirements—changed conditions.

Each user must notify the director of any significant changes to the user's operations or system which might alter the nature, quality, or quantity of the discharge at least 30 days before the change, or upon change in ownership of the property served, business ownership, activity or process.

(a) The director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 12.12.160 of this ordinance.

(b) The director may issue an individual wastewater discharge permit under Section 12.12.180 of this ordinance or modify an existing wastewater discharge permit under Section 12.12.210 of this ordinance in response to changed conditions or anticipated changed conditions.

SECTION 26. CHAPTER 12.12 AMENDED. Section 12.12.200 (Permit Conditions) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.200. Permit conditions.

Wastewater discharge permits shall be expressly subject to all provisions of Chapters 12.04 through 12.18 and all other regulations, user charges and fees established by the city. The conditions of wastewater discharge permits shall be uniformly enforced by the director in accordance with Chapters 12.04 through 12.18 and applicable state and federal regulations. An individual wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the director to prevent Pass Through or Interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

(a) Wastewater discharge permits must contain:

(1) A statement that indicates the wastewater discharge permit issuance date, expiration date and effective date;

(2) A statement that the wastewater discharge permit is nontransferable in accordance with section 12.12.230.

(3) Effluent limits, including Best Management Practices, based on applicable Pretreatment Standards;

(4) Self monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants (or best management practice) to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law;

(5) A statement of applicable civil and criminal penalties for violation of the Pretreatment Standards and Requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State, or local law;

(6) The process for seeking a waiver from monitoring for a pollutant neither present nor expected to be present in the discharge in accordance with section 12.12.150(d)(2). Any grant of the monitoring waiver by the director must be included as a condition in the user's permit, including the certification requirements of section 12.12.310(b);

(7) Requirements to control slug discharge, if determined by the director to be necessary;

(b) Wastewater discharge permits may contain, but need not be limited to, the following conditions:

(1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;

(2) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;

(3) Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges;

(4) Compliance time schedules or various schedules to complete required activities;

(5) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;

(6) Requirements for installation and maintenance of inspection and sampling facilities and equipment, including flow measurement devices;

(7) A statement that compliance with the individual wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State Pretreatment Standards, including those which become effective during the term of the individual wastewater discharge permit; and

(8) Other conditions or requirements as deemed appropriate by the director to ensure compliance with Chapters 12.04 through 12.18, and State and Federal laws, rules, and regulations.

SECTION 27. CHAPTER 12.12 AMENDED. Section 12.12.220 (Renewal of Wastewater Discharge Permit) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.220. Renewal of wastewater discharge permit.

Wastewater discharge permits must be renewed by the user upon expiration unless extended by the director for a period not to exceed ninety days. Application for a permit renewal must be submitted at least sixty days prior to expiration of the existing permit. The director may require a facility inspection and submittal of a new application. After evaluation and approval, the director may issue a new wastewater discharge permit.

SECTION 28. CHAPTER 12.12 AMENDED. Section 12.12.235 (Change of Ownership) is added to Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code to read as follows:

12.12.235. Change of Ownership

If at any time the facility for which a permit is issued is sold to another party, the new users shall apply for a wastewater discharge permit within 30 working days of taking possession of the facility. The conditions of the existing permit shall prevail until the director issues a valid permit.

SECTION 29. CHAPTER 12.12 AMENDED. Section 12.12.254 (Measurement of Pollutants) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.254. Measurement of Pollutants.

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or any report required by this ordinance shall be:

(a) Performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto, unless otherwise specified in an applicable categorical Pretreatment Standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the director or other parties approved by EPA.

(b) Analyzed by a laboratory that is accredited by the California Department of Public Health, Environmental Laboratory Accreditation Program for the pollutants being tested or another laboratory as approved by the director.

SECTION 30. CHAPTER 12.12 AMENDED. Section 12.12.260 (Inspection and Sampling) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.260. Inspection and Sampling.

The director shall have the right to enter premises of any user to determine whether the user is complying with all requirements of this ordinance and any wastewater discharge permit or order issued hereunder. Users shall allow the director ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

(a) The director shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.

(b) Where a user has security measures in force which would require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security staff so that upon presentation of suitable identification, the director shall be permitted to enter without delay for the purposes of performing specific responsibilities.

(c) The director may require the user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated as necessary to ensure their accuracy.

(d) The director may inspect and copy records or reports located at a facility of any user to confirm information submitted in the wastewater discharge permit application or other reports. The inspection of records or reports may include, but need not be limited to, material safety data sheets, solid waste or

hazardous waste disposal records, monitoring equipment repair or service records, chemical or material purchase or inventory records, or other records containing information related to the generation of waste or wastewater, or constituents and characteristics in the wastewater discharge.

(e) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the director and shall not be replaced. The costs of clearing such access shall be borne by the user.

(f) Unreasonable delays in allowing the director access to the user's premises shall be a violation of this ordinance.

SECTION 31. CHAPTER 12.12 AMENDED. Section 12.12.276 (Implementation of Reasonable Source Control Measures (RSCMs)) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby repealed in its entirety.

SECTION 32. CHAPTER 12.12 AMENDED. Section 12.12.280 (Special Agreement or Arrangement Allowed) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.280. Special agreement or arrangement allowed.

No statement contained in Chapters 12.04 through 12.18 shall be construed as prohibiting any special agreements or arrangements not otherwise prohibited by local, state or federal law between city and any user or potential user whereby any wastewater or waste of unusual strength or character or composition may be accepted by the city for treatment. Such agreements may be allowed, and in the event that any such special agreement or arrangement shall involve additional or extraordinary expense to the city, such user will be required to reimburse the city therefore, and in that connection, to post with the city such bond or other guarantee as shall be acceptable to the city.

SECTION 33. CHAPTER 12.12 AMENDED. Section 12.12.290 (Protection from Accidental and Slug Discharges) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.290. Protection from accidental and slug discharges.

The director shall evaluate whether each SIU needs an accidental discharge/slug discharge control plan or other action to control slug discharges. The director may require any user to develop, submit for approval, and implement such a plan or take such other action that may be necessary to control slug discharges. Alternatively, the director may develop such a plan for any user. An accidental discharge/slug discharge control plan shall address, at a minimum, the following:

- (a) Description of discharge practices, including non-routine batch discharges;
- (b) Description of stored chemicals;
- (c) Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under Chapter 12.12.020, with procedures for follow up written notification within five working days, as required by Section 12.12.300;

(d) Procedures to prevent adverse impact from accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage area, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

SECTION 34. CHAPTER 12.12 AMENDED. Section 12.12.300 (Notification of Discharge) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.300. Reports of potential problems.

(a) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, a slug discharge or slug load, which has a reasonable potential to cause interference or pass through, or in any other way violate the POTW's regulations, local limits or permit conditions, the user shall immediately contact and notify the director of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

(b) Within five (5) days following such discharge, the user shall, unless waived by the director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this ordinance.

(c) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees who to contact in the event of a discharge described in paragraph (a) above. Employers shall ensure that all employees, who could cause such a discharge to occur, are advised of the emergency notification procedure.

(d) Significant Industrial Users are required to notify the director immediately of any changes at its facility affecting the potential for a slug discharge.

SECTION 35. CHAPTER 12.12 AMENDED. Section 12.12.310 (Accidental Discharges – Notices to Employees) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.310 Certification Statements.

(a) Certification of Permit Applications and User Reports—The following certification statement is required to be signed and submitted by users submitting permit applications in accordance with Section 12.12.165; users submitting baseline monitoring reports under Section 12.12.150(a)(5); users submitting reports on compliance with the categorical Pretreatment Standard deadlines under Section 12.12.150(c); and users submitting periodic compliance

reports required by Section 12.12.150(d)(1)-(4). The following certification statement must be signed by an Authorized Representative as defined in Section 12.04.030(1):

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(b) Certification of Pollutants Not Present – Users that have an approved monitoring waiver based on Section 12.12.150(d) must certify on each report with the following statement that there has been no increase in the pollutant in its wastestream due to activities of the user

Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR _____ [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of _____ [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under section 12.12.150(d)(1).

SECTION 36. CHAPTER 12.12 AMENDED. Section 12.12.320 (Public Records – Trade Secrets) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.320. Public records—Trade secrets.

Information and data on a user obtained from reports, surveys, wastewater discharge permit applications, individual wastewater discharge permits, and monitoring programs, and from the director's inspection and sampling activities, shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the satisfaction of the director, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable State law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the user furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other effluent data, as defined at 40 CFR 2.302 shall not be recognized as confidential information and shall be available to the public without restriction.

SECTION 37. CHAPTER 12.12 AMENDED. Section 12.12.330 (Maintenance of Monitoring Records) of Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.12.330. Maintenance of monitoring records.

Users subject to the reporting requirements of this ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this ordinance, any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements, and documentation associated with Best Management Practices established under Section 12.12.120(b). Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the user or the city, or where the user has been specifically notified of a longer retention period by the director.

SECTION 38. CHAPTER 12.12 AMENDED. Section 12.12.340 (Affirmative Defenses to Discharge Violations) is added to Chapter 12.12 (Sewer Use Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code to read as follows:

12.12.340. Affirmative defenses to discharge violations

(a) Upset

(1) For the purposes of this Section, upset means an exceptional incident in which there is unintentional and temporary noncompliance with categorical Pretreatment Standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical Pretreatment Standards if the requirements of paragraph (C), below, are met.

(3) A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and the user can identify the cause(s) of the upset;

(ii) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and

(iii) The user has submitted the following information to the director] within twenty-four (24) hours of becoming aware of the upset [if this information is provided orally, a written submission must be provided within five (5) days]:

(A) A description of the indirect discharge and cause of noncompliance;

(B) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

(C) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

(4) In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.

(5) Users shall have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical Pretreatment Standards.

(6) Users shall control production of all discharges to the extent necessary to maintain compliance with categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

(b) Prohibited Discharge Standards

(1) User shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in 12.12.120(a) of this ordinance or the specific prohibitions in Section 12.12.020(b) of this ordinance if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause Pass Through or Interference and that either:

(i) Local Limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the Pass Through or Interference; or

(ii) No Local Limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the city was regularly in compliance with its NPDES permit, and in the case of Interference, was in compliance with applicable sludge use or disposal requirements.

(c) Bypass

(1) For the purposes of this Section,

(i) Bypass means the intentional diversion of wastestreams from any portion of a user's treatment facility.

(ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) A user may allow any bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (C) and (D) of this Section.

(3) Bypass Notifications

(i) If a user knows in advance of the need for a bypass, it shall submit prior notice to the director, at least ten (10) days before the date of the bypass, if possible.

(ii) A user shall submit oral notice to the director of an unanticipated bypass that exceeds applicable Pretreatment Standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

(4) Bypass is prohibited, and the director may take an enforcement action against a user for a bypass, unless

(i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(iii) The user submitted notices as required under paragraph (C) of this section.

(5) The director may approve an anticipated bypass, after considering its adverse effects, if the director determines that it will meet the three conditions listed in paragraph (D)(1) of this Section.

SECTION 39. CHAPTER 12.18 AMENDED. Section 12.18.030 is added to Chapter 12.18 (Enforcement) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code to read as follows:

12.18.030 Notification of violation

When the director finds that a user has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, the director may serve upon that user a written Notice of Violation. Within 14 days, or 10 business days, of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the director. Submission of such a plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this Section shall limit the authority of the director to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

SECTION 40. CHAPTER 12.18 AMENDED. Section 12.18.140 is added to Chapter 12.18 (Enforcement) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code to read as follows:

12.18.140. Publication of Users in Significant Noncompliance

The director shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the users which, at any time during the previous twelve (12) months, were in Significant Noncompliance with applicable Pretreatment Standards and Requirements. The term Significant Noncompliance shall be applicable to all Significant Industrial Users (or any other industrial user that violates paragraphs (c), (d) or (h) of this Section) and shall mean:

(a) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six- (6-) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including those defined in Chapter 12.12 of this ordinance.

(b) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six- (6-) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including those defined in Chapter 12.12 of this ordinance, multiplied by the applicable TRC criteria (TRC = 1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);

(c) Any other violation of a Pretreatment Standard or Requirement as defined by Chapter 12.12 of this ordinance that the director determines has caused, alone or in combination with other discharges, Interference or Pass Through, including endangering the health of POTW personnel or the general public;

(d) Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the director's exercise of its emergency authority to halt or prevent such a discharge;

(e) Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in an individual wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

(f) Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(g) Failure to accurately report noncompliance; or any other violation(s), which may include a violation of Best Management Practices, which the director determines will adversely affect the operation or implementation of the local pretreatment program.

SECTION 41. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

ATTACHMENT A

SECTION 42. CEQA EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15307 that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is an action by a regulatory agency for the protection of natural resources.

SECTION 43. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 44. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on _____, 2009, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2009, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
Date of Attestation: _____

Mayor

SEAL

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney