



Council Meeting: May 24, 2011

SUBJECT: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE TO AMEND CERTAIN SECTIONS OF CHAPTERS 12.04 (SEWERAGE SYSTEM); 12.12 (SEWER USE REGULATIONS) AND 12.18 (ENFORCEMENT) OF TITLE 12 (WATER AND SEWERS) OF THE SUNNYVALE MUNICIPAL CODE RELATING TO SEWER REGULATIONS AND ENFORCEMENT

REPORT IN BRIEF

Amendment of Sunnyvale Municipal Code (SMC) Title 12 is necessary to comply with the federal regulations for the National Pretreatment Program (40 CFR 403) and with recommended actions mandated by the Regional Water Quality Control Board (the Board). The proposed changes will modify the City's legal authority under Title 12 and its Pretreatment Program, to incorporate required provisions in accordance with 40 CFR Part 403. The draft Ordinance (Attachment A) includes only those sections that have changed. Where the section does not change, it is not duplicated in the proposed Ordinance draft. Title 12 is available in its entirety by request, or on the city's website at: <http://qcode.us/codes/sunnyvale/>

BACKGROUND

The few proposed revisions to SMC Title 12 are following a Pretreatment Sewer Use Ordinance Review conducted in October 2009 by the Board's consulting firm, Tetra Tech, Inc. The review memo dated October 21, 2009 included two required and three recommended corrections to SMC Title 12 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 proposed changes will not require a significant modification to the operation of the City's Pretreatment program, nor will the changes create additional requirements for the regulated industrial users, since these regulations have already been applicable to Industrial Users, but are proposed to be codified within Title 12.

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. The definition for significant noncompliance in section 12.04.030(50)(e) of the existing sewer use ordinance contains the phrase “general permit.” The City did not adopt the provision to issue general permits; therefore, the reviewers recommend that the City revise the sewer use ordinance to delete this phrase.

Section 12.12.160., “Wastewater discharge permit application”, is updated to include the authority to deny any application for a wastewater discharge permit. The existing language states that the director may issue a wastewater discharge permit to an industrial user when certain information is submitted, but does not contain the explicit authority to deny new or increased contributions of pollutants or changes in the nature of pollutants to the publicly owned treatment works (POTW) by industrial users where such contributions do not meet pretreatment standards and requirements or where such contributions would cause the POTW to violate its National Pollutant Discharge Elimination System permit (per 40 CFR 403.8(f)(1)(i)). The auditors recommend that the City revise the sewer use ordinance to include the authority to deny increased or changed contributions to the POTW.

Section 12.12.300 details the required reports of potential problems. Section 12.12.300 (e) is added, as required by the reviewers, to contain the requirement that an industrial user notify in writing the publicly owned treatment works (POTW), the U.S. Environmental Protection Agency’s Regional Waste Management Division Director, and state hazardous waste authorities of any discharge to the POTW of a hazardous waste. Although the existing sewer use ordinance prohibits the discharge of hazardous wastes, accidental discharges can occur, and the industrial user must notify the POTW as required by Title 40 of the Code of Federal Regulations (CFR) 403.12(p). The City is required to incorporate this requirement into the sewer use ordinance.

Section 12.18.030., “Notification of violation” contains authority to issue written notices of violation. The reviewers recommend that the City revise its sewer use ordinance to include sections that provide the City the authority to issue verbal and warning notices. Section 12.18.030 will be modified to add Sections (a) and (b) authorizing “Verbal Warnings” and “Warning Notices”, consistent with the Pretreatment Program’s existing “Enforcement Response Plan.”

The City’s existing sewer use ordinance does not contain the authority required by 40 CFR 403.8(f)(1)(vi)(A) to allow the City to seek injunctive relief for

noncompliance by industrial users. An injunction is an equitable remedy in the form of a court order, whereby a party is required to do, or to refrain from doing, certain acts. Section 12.18.100., “Judicial Civil Penalties” is being amended to specifically include injunctive relief as a remedy for noncompliance, as required by the reviewers.

FISCAL IMPACT

There is no negative fiscal impact to the City or industrial users.

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 Chapters 12.04, 12.12, 12.18 of Title 12 the Sunnyvale Municipal Code to incorporate the two required, and three recommended changes to be consistent with 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 be consistent with 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 be consistent with 40 CFR Part 403.

RECOMMENDATION

Staff recommends Alternative No. 1: Adopt the proposed ordinance amending Chapters 12.04, 12.12, 12.18 of Title 12 the Sunnyvale Municipal Code to incorporate the two required, and three recommended changes to be consistent with 40 CFR Part 403.

Reviewed by:

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

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 TO AMEND CERTAIN SECTIONS OF CHAPTERS 12.04 (SEWERAGE SYSTEM); 12.12 (SEWER USE REGULATIONS) AND 12.18 (ENFORCEMENT) OF TITLE 12 (WATER AND SEWERS) OF THE SUNNYVALE MUNICIPAL CODE RELATING TO SEWER REGULATIONS AND ENFORCEMENT

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. SECTION 12.04.030 AMENDED. Section 12.04.030 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 title, shall have the meaning hereinafter designated.

(1) - (49) [Text unchanged.]

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

(a) - (d) [Text unchanged.]

(e) Failure to meet, within ninety 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) - (h) [Text unchanged.]

(51) - (60) [Text unchanged.]

SECTION 2. SECTION 12.12.160 AMENDED. Section 12.12.160 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) - (14) [Text unchanged.]

(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 director may deny any application for a wastewater discharge permit. 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 3. SECTION 12.12.300 AMENDED. Section 12.12.300 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) - (d) [Text unchanged.]

(e) Hazardous waste discharge is prohibited, however, unauthorized discharges are subject to the following provisions:

(1) Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted according to Section 12.12.190 of this ordinance. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical Pretreatment Standards under the self-monitoring requirements of Section 12.12.150 of this ordinance.

(2) In the case of any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the User must notify the director, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

(3) In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(4) This provision does not create a right to discharge any substance otherwise prohibited to be discharged by this ordinance, a permit issued thereunder, or any applicable federal or state law.

SECTION 4. SECTION 12.18.030 AMENDED. Section 12.18.030 of Chapter 12.18 (Enforcement) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.18.030. Notification of violation.

(a) When the director finds that a user has violated, or continues to violate, any provision of this title, 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 issue a verbal notice to the user, which may be documented by the director. A verbal notice is a warning communicated to the industrial user orally, and is documented internally by the City.

(b) When the director finds that a user has violated, or continues to violate, any provision of this title, individual wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the director may issue a written warning notice, irrespective of whether the director has issued a verbal warning. A warning notice is a written notice of violation that a moderate violation has occurred. The warning notice directs the industrial user to take actions to correct the violation and does not require a formal response.

(c) When the director finds that a user has violated, or continues to violate, any provision of this title, 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 fourteen days, or ten 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 5. SECTION 12.18.100 AMENDED. Section 12.18.100 of Chapter 12.18 (Enforcement) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

12.18.100. Judicial ~~civil penalties~~ enforcement remedies.

(a) Civil penalties. Any person who intentionally or negligently violates any provision of Chapters 12.04 through 12.18 or any provision of any permit shall be civilly liable to the city in a sum of not to exceed twenty-five thousand dollars per day for each day in which such violation occurs. The city may petition the superior court pursuant to Government Code section 54740 to impose, assess, and recover such sums.

(b) Injunctive relief. When the director, or designee, 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 petition the superior court through the city attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the individual wastewater discharge permit, order, or other requirement imposed by this ordinance on activities of the user. The director may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or prerequisite for, taking any other action against a user.

SECTION 6. EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Sections 15061(b)(3) and 15307, that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project which has the potential for causing a significant effect on the environment and is a regulatory action as authorized by state law.

SECTION 7. 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 declares that it would have adopted this ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid.

SECTION 8. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 9. 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 _____, 2011, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2011, 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