

**ORDINANCE NO. 2952-11**

**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 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 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 May 24, 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