



Council Meeting: November 19, 2013

SUBJECT: Discussion and Possible Action to Adopt a Resolution Finding and Determining a Need for Modifications to the 2013 California Fire Code and to Introduce an Ordinance Adopting by Reference the 2013 California Fire Code with Local Amendments, Deleting Chapters 16.53 Toxic Gas and 16.54 Standards for High Rise Buildings and Modifying Title 20 Hazardous Materials and to Consider Finding that the Action is Exempt from the California Environmental Quality Act

BACKGROUND

The International Fire Code (IFC) is a model fire code that regulates minimum fire safety requirements for new and existing buildings, facilities, storage and processes. The IFC is in use or adopted by 42 states and is published every three years by the International Code Council.

In California, the California Building Standards Commission adopts the IFC with new statewide amendments every three years. This adopted code is known as the California Fire Code (CFC) and is found in Part 9 of Title 24 of the California Code of Regulations. Title 24 is commonly referred to as the California Building Standards Code.

The State of California adopted the 2013 California Fire Code in January 2013 and published the documents on July 1, 2013. All local jurisdictions are required to adopt this code with appropriate amendments by January 1, 2014, or accept by default the version adopted by the State.

The amendments and revisions set forth here establish the requirements of the 2013 Fire Code for the City of Sunnyvale. In addition to new amendments, relevant provisions from the Toxic Gas Ordinance, Standards for High Rise Buildings and the Hazardous Materials Storage Ordinance have been incorporated.

EXISTING POLICY

Sunnyvale General Plan - Safety and Noise Sub-Element

Goal SN-1, Acceptable Levels of Risk for Natural and Human-caused Hazards
Ensure that natural and human-caused hazards are recognized and considered in decisions affecting the community and that land uses reflect acceptable levels of risk based on identified hazards and occupancy.

Goal SN-3, Safe and Secure City

Ensure a safe and secure environment for people and property in the community by providing effective public safety response, prevention, and education services.

Policy SN-1.5: Promote a living and working environment safe from exposure to hazardous materials.

CEQA REVIEW

The proposed action 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. (Title 14 of the California Code of Regulations, Section 15061(b)(3).)

DISCUSSION

Cooperative Efforts at Regional Standardization

Many of the proposed amendments to the Sunnyvale Fire Code were developed in cooperation with other cities and fire districts within Santa Clara County in an effort to provide regulatory consistency throughout the county.

In early 2013, the Sunnyvale Public Safety Fire Marshal participated in Santa Clara County Fire Marshals' meetings, focusing on the new 2013 CFC. A two-step process was followed:

1. The new CFC was examined to identify areas where state standards have changed. Where changes in the new CFC duplicated existing local amendments, the local amendment was deleted.
2. The meeting members identified and examined individual local amendments that were more restrictive than the new state standards. These amendments were examined to see if the underlying assumptions or operational experience, upon which the amendments were based, were still applicable. Where the basis for the amendment has not changed, the various options for local regulation were examined and agreement was reached on uniform wording for the amendment.

Because the code is developed by such a diverse group of interests and regions, the CFC is utilized as a code of minimum standards. Different climates, topography, geology, firefighting tactics, firefighting capabilities, and resources warrant different levels of built-in fire protection. For these reasons and others, cities and fire districts amend and adopt codes, which are more restrictive than the California Building Standards Code (Title 24) or the underlying model code, the IFC.

Some of the proposed fire code amendments will be proposed for adoption by all fire jurisdictions in Santa Clara County. The changes have no impact on local zoning decisions.

Significant Amendments to the California Fire Code

1. Emergency Responder Radio Coverage

Emergency responder radio coverage requirements have been included in the CFC for several code cycles. However, the 2013 CFC contains detailed requirements for design, installation and testing that had previously been non-mandatory Appendix material. As part of an ongoing effort to enhance emergency responder radio coverage across the region, the Sunnyvale Department of Public Safety (DPS), along with other Santa Clara County emergency response agencies, is transitioning away from its current UHF radio frequency to a new 700 MHz system. The amendments proposed to Section 510 were developed to clarify Sunnyvale's specific requirements and meet the needs of DPS. Included is a requirement to provide not less than 24 hours of standby power for the system and a requirement that a qualified independent third party conduct final radio system acceptance testing to validate results obtained by the system installer. The third party tester is considered necessary based on DPS' available resources and staff's current lack of technical expertise.

2. Location of Fire Command Center in High Rise Buildings

A new local amendment has been added that will require the fire command center in high rise buildings to have an exterior door that opens on to one of the two emergency vehicle access roads required to serve the building. The fire command center is constructed specifically for use by first responders during emergency operations and contains all of the notification panels and operational controls for the critical life safety systems and building infrastructure. These systems include the fire alarm system, mechanical ventilation, smoke control, secondary water supply, and in-building voice communication system. Currently, these rooms are only accessible through the main lobby on the interior of the building. By requiring an exterior door opening onto an emergency vehicle access road, emergency responders will be in close proximity to critical incident command operations that are typically conducted from the command vehicle located on the access road and provided with an immediate means of egress from the room. In addition, when emergency responders are required to access the fire command center through the building's main entrance and lobby, their response can be impeded by building occupants evacuating through the same doors.

3. Hazardous Materials

The Toxic Gas ordinance (Chapter 16.53) is proposed for deletion, however new amendments to the Fire Code (Chapter 16.52) are proposed that will provide an equivalent level of protection and control of these gases. The amendments retain a definition of 'moderately toxic' and add local regulation of certain gases that are not treated by the model code as toxic. Also retained is the lower regulatory threshold of toxic and highly toxic gases, providing for local regulation that is more restrictive than model codes adopted across the state and the nation. The proposed Fire Code regulations for highly toxic, toxic and

moderately toxic gases are consistent with regulations adopted throughout Santa Clara County.

The Hazardous Materials (Title 20) ordinance has been revised to retain only those provisions that establish and authorize the City's Consolidated Uniform Program Agency (CUPA). The CUPA enforces six statewide environmental and hazardous materials related programs and issues permits for those programs where required by the State. Currently, Title 20 contains provisions requiring a permit for storage of any quantity of hazardous materials. One impact of the proposed modification of Title 20 is that a hazardous materials permit will now only be issued when required either by one of the six CUPA-regulated programs or the California Fire Code as amended, whichever is more restrictive. This could eliminate between 200 and 300 permits currently issued to local businesses that store or use small quantities of hazardous materials. By approving this proposal, these permits, and the associated revenue, would be eliminated and Sunnyvale businesses would no longer be required to obtain permits for storage or use of hazardous materials at thresholds below what is required by the Fire Code as amended, or the state.

4. New Permits

Amendments to the California Fire Code (Chapter 16.52) are proposed that will require operational permits for the following systems and activities: stationary battery systems, emergency responder radio coverage systems, firefighter air replenishment systems, hazardous materials stabilization, outdoor assembly event, temporary assembly occupancy, moderately toxic gas and other health hazard materials. Additionally, a requirement to obtain a construction permit to install or modify a firefighter air replenishment system has been added.

Smoke detection systems protecting stationary battery systems, emergency responder radio coverage systems and firefighter air replenishment systems are all required to be tested and certified at least annually. The permit will provide a mechanism for the City 1) to ensure that the system owners are aware of the code requirements pertaining to these systems and 2) to identify where the systems have been installed so that regular inspections can be conducted to ensure compliance with the testing requirements. It is not anticipated that these new permits will provide significant additional revenue.

Deleting the High Rise Ordinance (Chapter 16.54)

A separate ordinance (Chapter 16.54) currently governs buildings classified as high rise buildings. A high rise building is any building having floors used for human occupancy located more than 75 feet above the lowest floor level having building access. This ordinance is now proposed for deletion and any relevant provisions in that ordinance that are not addressed by the California Fire Code have been incorporated as local amendments to the Fire Code (Chapter 16.52). One significant existing amendment that is being eliminated is the requirement to provide a variety of fire-fighting equipment and an 'equipment room' to house it on every third floor of the building. Because much of the equipment contained in these rooms is required to be regularly tested and maintained by

the building owner, DPS has determined that the equipment should not be relied upon in an emergency. For that reason, the amendment requiring the equipment and the equipment rooms is deleted.

Deleting the Toxic Gas Ordinance (Chapter 16.53) and Modifying the Hazardous Materials Ordinance (Title 20)

In response to a number of leaking underground storage tanks in the City of San Jose in the early 1980s, stakeholders from environmental regulatory agencies in Santa Clara County, the Santa Clara County Fire Chiefs Association, local businesses and environmental advocacy groups cooperatively developed a set of regulations to broadly govern the storage and use of hazardous materials. That set of regulations became known as the Hazardous Materials Storage Ordinance and in the mid-1980s it was widely adopted by jurisdictions within Santa Clara County, including Sunnyvale. It has remained largely unchanged as a local ordinance (Title 20) in Sunnyvale since that time.

In the late 1980s, Santa Clara County was the center of the new and emerging semiconductor fabrication technology industry that utilized toxic and pyrophoric gases in systems and processes that were virtually unregulated by codes and standards. Sunnyvale joined Santa Clara County and other cities within the County to develop a model Toxic Gas Ordinance that regulated the handling, dispensing and potential release of toxic gases. That ordinance was adopted by the City of Sunnyvale as Chapter 16.53 (Toxic Gas) in the late 1980s and like the Hazardous Materials Storage Ordinance it too has remained virtually unchanged since its original adoption.

While Santa Clara County was taking initiative to locally address the hazards associated with toxic gases and hazardous materials, there was a national effort underway to address the lack of regulation of hazardous materials. In 1988 the Uniform Fire Code, published by the Western Fire Chiefs Association and the International Conference of Building Officials and adopted by nearly 20 western states including the State of California, expanded the hazardous materials regulations from 5 pages to 65 pages. The Toxic Gas Ordinance was used as the basis for many of the Uniform Fire Code requirements for toxic gases. In 1995, requirements similar to those contained in both the Hazardous Materials Storage Ordinance and Toxic Gas Ordinance were formally adopted in the California Fire Code. Since that time several Santa Clara County jurisdictions have developed amendments to the Fire Code to retain the relevant provisions from those ordinances and eliminate the stand alone ordinances. Sunnyvale has retained both ordinances virtually unchanged for over 20 years.

The Fire Code amendments proposed here include the latest amendments developed by Santa Clara County jurisdictions to retain some provisions of the historical Hazardous Materials Storage and Toxic Gas ordinances. The International Fire Code adopted and amended by the State is a consensus standard that is continually undergoing changes and updates and responding to incidents around the world involving hazardous materials. As fire and life

safety technologies continue to rapidly change and evolve, it is becoming increasingly important to align with the International Fire Code and minimize the number of local ordinances and amendments related to complex processes and systems involving hazardous materials.

FISCAL IMPACT

The changes to the ordinance will affect how and when some small quantity hazardous materials permits are issued. Currently, there are 313 facilities with small quantity hazardous materials permits that generate approximately \$79,000 annually in permit fee revenue. Under the proposed changes, hazardous materials inspectors will determine during annual facility inspections whether the permit is still required based on the Fire Code permit thresholds. It is estimated that approximately half of the permits will no longer be required, resulting in a negative fiscal impact of approximately \$40,000. However, permit fee revenues are expected to increase as hazardous materials inspectors adjust their focus to capture currently unpermitted uses. The transition period between cancelling permits that are no longer needed, and identifying and permitting new uses and facilities is expected to take approximately two years. Therefore, the revenue loss is temporary and staff anticipates the changes will have a positive fiscal impact over the long term.

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 resolution of local findings and introduce the ordinances (Attachments A-E) adopting the 2013 California Fire Code with amendments as Chapter 16.52 of the Sunnyvale Municipal Code, deleting Chapters 16.53 (Toxic Gas) and 16.54 (Standards for High Rise Buildings), and modifying Title 20 to retain only those requirements pertaining to the establishment and authority of the Consolidated Unified Program Agency (CUPA).
2. Do not accept the proposed resolution, amendments and municipal code changes.

RECOMMENDATION

Staff recommends Alternative #1, adopt the resolution of local findings and introduce the ordinances (Attachments A-E) adopting the 2013 California Fire Code with amendments as Chapter 16.52 of the Sunnyvale Municipal Code, deleting Chapters 16.53 (Toxic Gas) and 16.54 (Standards for High Rise Buildings), and modifying Title 20 to retain only those requirements

pertaining to the establishment and authority of the Consolidated Unified Program Agency (CUPA).

Reviewed by:

Frank Grgurina
Director, Public Safety
Prepared by: Lynne M. Kilpatrick, Fire Marshal

Reviewed by:

Grace Leung
Director, Finance

Gary M. Luebbers
City Manager

Attachments

- A. Resolution of the City Council of the City of Sunnyvale finding and determining the need for modifications to the 2013 California Fire Code.
- B. Ordinance adopting by reference the 2013 California Fire Code with amendments as the Fire Code of the City of Sunnyvale.
- C. Ordinance repealing Sunnyvale Municipal Code Chapter 16.53 - Toxic Gas.
- D. Ordinance repealing Sunnyvale Municipal Code Chapter 16.54 - Standards for High-rise buildings.
- E. Ordinance amending Sunnyvale Municipal Code Title 20 - Hazardous Materials.

DRAFT 10/16/13 RLM

RESOLUTION NO. ____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF SUNNYVALE FINDING AND DETERMINING THE
NEED FOR MODIFICATIONS TO THE 2013 CALIFORNIA
FIRE CODE**

WHEREAS, the City of Sunnyvale is adopting the 2013 CALIFORNIA FIRE CODE with numerous changes and modifications;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE that it finds and determines there is a need to adopt the changes or modifications because of local climatic, topographic, geological and related geographic conditions.

General Findings**1. Climatic**

- a. **Precipitation.** Precipitation ranges from 4.83 to 30.30 inches per year with an average of approximately 13.86 inches per year. Approximately 90% falls during the months of November through April and 10% from May through October. This area experienced a major drought in 1977-78 and a moderate drought the next five years; it is possible that more droughts will occur in the future. The local climate is characterized by markedly delineated rainy and dry seasons, which tend to maximize the expansive characteristics of soil.
- b. **Relative Humidity.** Humidity generally ranges from 60% during daytime to 80% at night. It drops to 20% during the summer months and occasionally drops lower.
- c. **Temperatures.** Temperatures have been recorded as high as 108° F. Average summer highs are in the 78°-82° F. range.
- d. **Winds.** Prevailing winds are from the Northwest or Southeast. However, winds are experienced from virtually every direction at one time or another. Velocities are generally in the 5-mph to 15-mph range, gusting to 7.4 mph to 30 mph, particularly during the summer months. Extreme winds, up to 60 mph, have been known to occur.
- e. **Summary.** These local climatic conditions affect the acceleration, intensity and size of fire in the community. Times of little or no rainfall, of low humidity and high temperatures create extremely hazardous conditions, particularly as they relate to wood shake and shingle roof fires and conflagrations. The winds experienced in this area can have a tremendous impact upon structure fires of buildings in close proximity to one another commonly found in Sunnyvale. During wood shake and shingle roof fires, or exposure fires, winds can carry sparks and burning brands to other structures, thus spreading the fire and causing conflagrations. In building fires, winds can literally force fires back into the building and can create a blowtorch effect, in addition to preventing "natural" ventilation and cross-ventilation efforts.

2. Geological, Geographic and Topographic

- a. **Geographic Location.** Sunnyvale is located in the Santa Clara Valley. It has taken its place as the second largest city in the heart of the "Silicon Valley," the center for an expanding and changing technology industry.
- b. **Seismic Location.** Sunnyvale is situated on alluvial soils between San Francisco Bay and the San Andreas Fault zone. The City's location makes it particularly vulnerable to damage to

taller and older structures caused by seismic events. The relatively young geological processes that have created the San Francisco Bay Area are still active today. Seismically, the City sits between two active earthquake faults (San Andreas and the Hayward/Calaveras) and numerous potentially active faults.

c. Seismic and Fire Hazards. Gypsum wallboard and exterior portland cement plaster have performed poorly during recent California seismic events. The shear values for gypsum wallboard and portland cement stucco contained in the code are based on mono-directional testing. It is appropriate to limit the use of these products until cyclic loading testing are performed and evaluated. Fire following an earthquake has the potential of causing greater loss of life and damage than the earthquake itself.

Hazardous materials, particularly toxic gases, could pose the greatest threat to the largest number, should a significant seismic event occur. Public safety resources would have to be prioritized to mitigate the greatest threat, and may likely be unavailable for smaller single dwelling or structure fires.

Other variables may tend to intensify the situation:

1. The extent of damage to the water system;
2. The extent of isolation due to bridge and/or freeway overpass collapse;
3. The extent of roadway damage and/or amount of debris blocking the roadways;
4. Climatic conditions (hot, dry weather with high winds);
5. Time of day will influence the amount of traffic on roadways and could intensify the risk to life during normal business hours;
6. The availability of timely mutual aid or military assistance;
7. The large portion of dwellings with wood shingle roof coverings could result in conflagrations.

d. Size and Population. The City has an area over 24 square miles in size and a population estimated to be 135,721.

e. Development. Sunnyvale is a community, which is projected to add 7,200 new residential units within the next twenty-five years, primarily in multi-family configurations, for which building security is a matter of acute importance.

f. Public Safety Department. Sunnyvale utilizes a public safety (joint police/fire) department with personnel who function as both fire suppression and police officers, resulting in fewer personnel than otherwise would be required for a city of its size. A premium is therefore placed on built-in physical techniques and devices as crime preventative measures. It is therefore also imperative that fire detection and suppression occur as quickly as possible to minimize loss of property and life. For these reasons the most stringent provisions are required concerning fire detection, alarm and suppression systems.

g. Roads and Streets. The number of vehicle miles driven in the City is steadily increasing and considerable efforts in traffic and roadway improvements are being made to ease the crush of commuters to and through the City to their homes and places of work. Because of the City's high concentration of jobs, much of the peak traffic is made by nonresidents traveling to or from Sunnyvale. The impact of planned developments and traffic flow will continue to have an effect on the Department of Public Safety and delivery of fire services.

h. Industry. Sunnyvale is the site of many manufacturing and research industries which use toxic, flammable and explosive chemicals and materials in potentially hazardous combinations. Special precautions thus are required to minimize the risk of damage to adjoining persons and properties.

i. Mixed Industrial/Residential Uses. High-density residential uses are located near high-risk industries, necessitating special precautions.

j. Transportation. Sunnyvale is divided by an interstate highway, which potentially could affect response times of fire suppression equipment.

k. Soil Conditions and Topography. Sunnyvale lies at the southern end of San Francisco Bay and is built atop the alluvial deposits that surround the margins of the Bay. The alluvium was created by the flooding of the many streams emptying into the San Francisco Bay depression, and from intermittent seawater inundation that has occurred over the last 2 or 3 million years. The areas closest to the Bay are overlain by unconsolidated fine silty clay, known as "Bay Mud" which varies in thickness from a few feet to as much as 30 feet. Generally, the older, more stable alluvium is to the south and the younger, less stable material is to the north. Bedrock lies beneath the area at depths generally 300' or more. The topography is essentially flat, dropping from an elevation of 300 feet to sea level. The slope across the City is in a northeasterly direction from the high point in the southwest corner to the Bay. The average slope is approximately 0.9%.

The Silicon Valley is within a very active seismic area and local soil conditions can be highly expansive (clay soils). The Northridge earthquake provided hundreds of examples of damage to plain concrete footings. This type of damage is extremely expensive to repair, in contrast to the small expense of providing nominal footing reinforcement. Footing reinforcement is also necessary to prevent damage due to pumping action caused by local expansive soils, which shrink and swell during seasonal drying and wetting conditions.

Most of the surface soils in the Silicon Valley are relatively young and unconsolidated sedimentary materials formed from a wide variety of parent materials. The varying chemical composition, degree of weathering, and the relatively acid environment have created soils of varying types, which are particularly corrosive in nature. Much of the surface soil in the Silicon Valley is highly expansive (i.e., shrink-swell behavior) and has low bearing strength.

l. Water/Sewer. Some parts of the Silicon Valley have hard water, which is corrosive to ferrous pipe. The groundwater table is unusually high in many places. Expansive soils create unstable conditions, which increase the potential of breaks in sewer laterals. To maintain health and sanitary services, it is necessary to gain access, to periodically maintain public sanitary laterals.

m. Buildings, Landscaping and Clearances. Many of the newer large buildings and building complexes are of designs, which greatly limit visibility and approach to and accessibility by Public Safety resources. Many houses and other buildings with wood roofs and/or sidings are so close together that fire will readily spread from one to another by both radiation and convection.

n. Summary. The stated local geological, geographic and topographical conditions increase the magnitude, exposure, accessibility problems and fire hazards presented to the Department of Public Safety. Lying beneath Sunnyvale are thick layers of sand, gravel and clay, known as alluvium, which amplify the effects of earthquakes. Based on the damage caused in Santa Clara Valley by the 1906 earthquake and the poor performance of alluvial deposits during earthquakes, this area could be subject to severe damage.

Findings.

With the exception of changes justified on administrative grounds, the local amendments of the 2013 CALIFORNIA FIRE CODE are justified by all of the aforementioned general findings.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause a copy of this resolution, together with the ordinances making the changes and modifications to the enumerated uniform codes, to be filed with the State Department of Housing and Community Development.

Adopted by the City Council at a regular meeting held on November 19, 2013, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM:

Joan A. Borger, City Attorney

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AMENDING TITLE 16 (BUILDING AND CONSTRUCTION) OF THE SUNNYVALE MUNICIPAL CODE TO ADOPT BY REFERENCE THE 2013 CALIFORNIA FIRE CODE AS THE FIRE CODE OF THE CITY OF SUNNYVALE

WHEREAS, the public health, safety and welfare will be served by the adoption of the "2012 International Fire Code" as amended by the "2013 California Fire Code," including appendixes Appendices B, C, D, F, H, and, as amended by the State of California and local amendments, which are hereby adopted by reference as the Fire Code of the City of Sunnyvale.

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

SECTION 1. REPEAL. Ordinance No. 2942-10, codified as Chapter 16.52 of the Sunnyvale Municipal Code, and all prior ordinances pertaining to this subject are hereby repealed.

SECTION 2. CHAPTER 16.52 ADDED. Sunnyvale Municipal Code Chapter 16.52 is hereby added to read as set forth in Exhibit "A" attached and incorporated.

SECTION 3. STATUTORY REFERENCES, INCLUSIONS OF AMENDMENTS AND ADDITIONS. Whenever reference is made to any portion of this ordinance, or of any other chapter or section of the Sunnyvale Municipal Code, or of any other ordinance of the City of Sunnyvale, or of any law of the State of California, the reference applies to all amendments and additions now or thereafter made.

SECTION 4. INTERPRETATIONS. In interpreting and applying the provisions of this ordinance, the requirements contained herein are declared to be minimum requirements for the purposes set forth. The provisions of this ordinance, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations and not as new enactments. This ordinance shall not nullify the more restrictive provisions of covenants, agreements or other ordinances or laws, but shall prevail as to such provisions which are less restrictive.

SECTION 5. CONSTITUTIONALITY, SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Sunnyvale declares that it would have passed this ordinance and every section, subsection, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

SECTION 6. FINDINGS. The deletions, additions, and/or amendments to the California Fire Code as set out in Exhibit "A" and which are the subject of this ordinance, are

ATTACHMENT B

based upon the general and specific findings by the City Council of the City of Sunnyvale, which findings are set forth in Resolution No. ____.

SECTION 7. EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), 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.

SECTION 8. EFFECTIVE DATE. This ordinance shall be in full force and effect on January 1, 2014.

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 of a notice once in The Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, 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, November 19, 2013, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on November 26, 2013, by following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

ATTEST:

APPROVED:

City Clerk

Mayor

APPROVED AS TO FORM:

Joan A. Borger, City Attorney

DRAFT 10/16/13 RUM

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE REPEALING CHAPTER 16.53 (TOXIC GAS) OF TITLE 16 (BUILDING AND CONSTRUCTION) OF THE SUNNYVALE MUNICIPAL CODE

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

SECTION 1. REPEAL. Chapter 16.53 (Toxic Gas) of Title 16 (Building and Construction) of the Sunnyvale Municipal Code is hereby repealed.

SECTION 2. EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), 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.

SECTION 3. EFFECTIVE DATE. This ordinance shall be in full force and effect on January 1, 2014.

SECTION 4. 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 of a notice once in The Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, 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 November 19, 2013, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on November 26, 2013, by following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

ATTEST:

APPROVED:

City Clerk

Mayor

Date of Attestation: _____
(SEAL)

APPROVED AS TO FORM:

Joan A. Borger, City Attorney

DRAFT 10/16/13 RUM

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE REPEALING CHAPTER 16.54 (HIGH RISE BUILDINGS) OF TITLE 16 (BUILDING AND CONSTRUCTION) OF THE SUNNYVALE MUNICIPAL CODE

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

SECTION 1. REPEAL. Chapter 16.54 (High Rise Buildings) of Title 16 (Building and Construction) of the Sunnyvale Municipal Code is hereby repealed.

SECTION 2. EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), 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.

SECTION 3. EFFECTIVE DATE. This ordinance shall be in full force and effect on January 1, 2014.

SECTION 4. 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 of a notice once in The Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, 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 November 19, 2013, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on November 26, 2013, by following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

ATTEST:

APPROVED:

City Clerk

Mayor

Date of Attestation: _____
(SEAL)

APPROVED AS TO FORM:

Joan A. Borger, City Attorney

DRAFT 10/16/13 RUM

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF SUNNYVALE AMENDING TITLE 20 (HAZARDOUS
MATERIALS) OF THE SUNNYVALE MUNICIPAL CODE**

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

SECTION 1. REPEAL. Title 20 (Hazardous Materials), Chapters 20.04 through 20.56, inclusive, of the Sunnyvale Municipal Code are hereby repealed.

SECTION 2. TITLE 20, CHAPTER 20.60 AMENDED. Sunnyvale Municipal Code Title 20, Chapter 20.60 (Certified Unified Program Agency Program Administration) is hereby recodified as Chapter 20.10 and amended to read as set forth in Exhibit "A" attached and incorporated.

SECTION 3. STATUTORY REFERENCES, INCLUSIONS OF AMENDMENTS AND ADDITIONS. Whenever reference is made to any portion of this ordinance, or of any other chapter or section of the Sunnyvale Municipal Code, or of any other ordinance of the City of Sunnyvale, or of any law of the State of California, the reference applies to all amendments and additions now or thereafter made.

SECTION 4. INTERPRETATIONS. In interpreting and applying the provisions of this ordinance, the requirements contained herein are declared to be minimum requirements for the purposes set forth. The provisions of this ordinance, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations and not as new enactments. This ordinance shall not nullify the more restrictive provisions of covenants, agreements or other ordinances or laws, but shall prevail as to such provisions which are less restrictive.

SECTION 5. CONSTITUTIONALITY, SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Sunnyvale declares that it would have passed this ordinance and every section, subsection, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

SECTION 6. EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), 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.

SECTION 7. EFFECTIVE DATE. This ordinance shall be in full force and effect on January 1, 2014.

SECTION 8. 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 of a notice once in The Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, 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 November 19, 2013, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on November 26, 2013, by following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk

Mayor

Date of Attestation: _____
(SEAL)

APPROVED AS TO FORM:

Joan A. Borger, City Attorney

Title 20.
HAZARDOUS MATERIALSChapter ~~20.60~~ 20.10

CERTIFIED UNIFIED PROGRAM AGENCY PROGRAM ADMINISTRATION

- 20.10.010. Certified unified program agency (CUPA).
- 20.10.020. Findings and purpose.
- 20.10.030. Adoption of provisions of six hazardous materials and waste management programs consolidated under the unified program.
- 20.10.040. Enforcement responsibility—Delegation of authority.
- 20.10.050. Permit
- 20.10.060. Fees and penalties.
- 20.10.070. Inspections.
- 20.10.080. Enforcement.
- 20.10.090. Public disclosure.
- 20.10.100. Indemnification.
- 20.10.110. Relation to existing laws.

20.10.010. Certified unified program agency (CUPA).

(a) Pursuant to approval by the State of California Environmental Protection Agency's (Cal EPA) of Sunnyvale's application to serve as the certified unified program agency (CUPA) for the city, the City of Sunnyvale assumes authority and responsibility within the city for the unified hazardous waste and hazardous materials management regulatory program (unified program) established by Health and Safety Code, Division 20, Chapter 6.11, Section 25404, et seq. This program consolidates the administration and enforcement of six hazardous materials management programs and ensures the coordination and consistency of any regulations adopted pursuant to such program requirements. The six programs are:

- (1) Hazardous Waste Generator and Onsite Hazardous Waste Treatment (tiered permitting) Program; Hazardous waste generator requirements;
- (2) Aboveground Petroleum Storage Act; Aboveground petroleum storage tanks spill prevention control and countermeasure plan;
- (3) Underground Storage Tank Program; Underground storage tanks;
- (4) Hazardous Materials Release Response Plans and Inventories (Business Plans); Hazardous materials release response plans and inventories, commonly referred to as hazardous materials business plans;
- (5) California Accidental Release Prevention (CalARP) Program; Requirements concerning acutely hazardous materials, commonly referred to as accidental release prevention programs (CalARP) and
- (6) California Fire Code: Hazardous Material Management Plans and Inventory Statements California Fire Code requirements concerning hazardous material management plans and inventories

(b) The city has exclusive, local jurisdiction within its boundaries to administer and enforce the requirements of the **U**nified **P**rogram.

20.10.020. Findings and purpose.

The city council finds and declares:

(a) Hazardous materials and hazardous waste in the community may be deleterious to the environment and the health of individuals who visit, reside or work in the city if they are exposed to such substances as a result of fire, spills, industrial accidents, releases, emissions or other incidents.

(b) Businesses that safely handle, use, store and dispose of hazardous materials and waste benefit the community by protecting the environment and the health and welfare of residents, workers and visitors. It is the intent of the city council that the administration and enforcement of the **U**nified **P**rogram requirements will facilitate safe business practices with respect to hazardous materials and waste.

(c) The purpose of this chapter is the protection of health, life, resources and property. It is the intent of the city council that the administration and enforcement of the **U**nified **P**rogram will reduce the likelihood of fires, spills, emissions, releases and other incidents that could detrimentally affect the lives of residents, visitors and workers and the environment by establishing an inspection procedure, disclosure requirements, and permitting procedures for businesses that handle, store, use, and dispose of hazardous materials and waste in the city.

20.10.030. Adoption of provisions of six hazardous materials and waste management programs consolidated under the **Unified **P**rogram.**

(a) The following provisions of the California Health and Safety Code and applicable regulations, as they may be amended from time to time, which establish the requirements of the six hazardous waste and materials management programs that are consolidated by the **U**nified **P**rogram hereby are incorporated by reference as if fully set forth herein:

(1) Health and Safety Code, Division 20, Chapter 6.5, Section 25100, et seq. Hazardous waste generator requirements, including enforcement and implementation of the onsite hazardous waste treatment and tiered permitting program;

(2) Health and Safety Code, Division 20, Chapter 6.67, Sections 25270.2, 25270.4, 25270.5(c). Aboveground petroleum storage tanks (spill prevention control and countermeasure plan);

(3) Health and Safety Code, Division 20, Chapter 6.7, Section 25280, et seq. Underground storage of hazardous substances;

(4) Health and Safety Code, Division 20, Chapter 6.95, Article 1, Section 25501, et seq. Hazardous materials release response plans and inventories, commonly referred to as ~~hazardous materials~~ business plans and hazardous materials area plans;

(5) Health and Safety Code, Division 20, Chapter 6.95, Article 2, Section 25531, et seq. Requirements concerning acutely hazardous materials, commonly referred to as the accidental release prevention program (CalARP); and

(6) ~~Sections 5001.5.1 and 5001.5.2 of the International Fire Code~~ ~~Section 80103 of the Uniform Fire Code, subdivisions (b) and (c) as adopted by the State Fire Marshal pursuant to Health and Safety Code, Section 13143.9, California Fire Code requirements concerning hazardous material management plans and inventories.~~

(b) This chapter shall be implemented and enforced in compliance with the state's ~~Unified P~~program requirements, the provisions set forth in subsection (a) of this section ~~and~~ any other applicable laws and regulations, as they may be amended from time to time., ~~and the following:—~~

~~————— (1) Title 16 of this Code pertaining to hazardous materials and waste management, including the storage, dispensing, use and handling of toxic gases; and~~

~~————— (2) The other chapters of Title 20 of this Code dealing with regulation of hazardous materials.~~

(c) This chapter shall be implemented and enforced in accordance with any other requirements ~~that~~ which are applicable to the ~~Unified P~~program, but are not specifically incorporated by reference in this chapter, any new federal, state or local laws and/or regulations that may be enacted from time to time and any amendments to any such requirements.

20.10.040. Enforcement responsibility—Delegation of authority.

(a) The department of public safety is designated as the administering agency responsible for the administration and enforcement of the ~~Unified P~~program and this chapter. The city manager delegates to the director of public safety the authority to take any and all actions that may be necessary for public safety to administer and enforce the ~~Unified P~~program requirements and this chapter. All city employees designated by the director of public safety are authorized to make inspections and take any actions on behalf of the director as may be required to administer and enforce the requirements of the ~~Unified P~~program and this chapter.

(b) The director or his/her designee shall be the administrator of the ~~Unified P~~program and this chapter.

(c) The director of public safety may, for purposes consistent with this chapter, undertake actions, including but not limited to public educational programs regarding hazardous materials and waste, the requirements of this chapter, and promotion of pollution prevention, and recycling of waste products.

20.10.050. Permit.

Any person, firm or corporation that conducts one of the activities, or stores, handles or uses any hazardous materials regulated by one of the hazardous waste and materials management programs identified in Section 20.10.030 herein shall obtain and keep current a hazardous materials permit issued pursuant to this title and Health and Safety Code, Division 20, Chapter 6.11, Section 25404, et seq. One such permit shall be issued for a single facility. Additional approvals shall be obtained for any facility thereafter connected, installed, constructed, repaired, substantially modified, replaced, closed or removed, or for any change or addition in hazardous materials stored, handled or used, not in accordance with the prior approval. Such additional approval shall be obtained prior to the commencement of such activity. Notwithstanding the above, permittee shall have thirty days to apply for an additional approval for the storage or use of new or different hazardous material

with the same hazard class as stated on the existing permit approvals where such storage or use does not increase the hazard of fire or explosion or the hazard of the production of flammable or toxic gas. Storage or use of new or different hazardous materials, not meeting all of these criteria, shall require the prior additional approval.

20.10.060. Fees and penalties.

The city council shall establish, from time to time, a schedule of fees for each class of permits issued under this chapter, for additional late fees, and for additional services provided by the city to administer and enforce this chapter. The fees established by the city council shall be sufficient to allow the city to recover its costs of administering this chapter. Such fees shall take effect upon adoption by the city council.

20.10.070. Inspections.

(a) In order to carry out the purposes of this chapter, the administrator has the authority to inspect any place/site where hazardous materials or wastes are handled, or any place/site where the administrator has reason to believe that an unauthorized release of a hazardous material has occurred, is occurring, or may occur. This authority extends to any property within two thousand feet of property on which hazardous materials or wastes are handled. The authority conferred by this section includes the authority to conduct any monitoring or testing of any aboveground or underground storage tank system. This right of entry shall be exercised only at reasonable hours unless otherwise required by an emergency, and entry shall be made to any establishment or property only with the consent of the owner or tenant thereof, or with property inspection warrant or other remedy provided by law to secure entry.

(b) All inspections under this chapter shall be at the discretion of the department of public safety and nothing in this chapter shall be construed to require that the department conduct any inspection, nor shall any inspection by department of public safety create a duty to conduct any other inspection. Furthermore, nothing in this chapter shall be construed to hold the department of public safety or any officer, employee or representative of the department responsible for any damage to persons or property by reason of making an inadequate or negligent inspection, or by reason of any failure to make an inspection or reinspection, or take any enforcement or remedial action.

20.10.080. Enforcement.

(a) Any party that violates any provision of this chapter shall be liable for civil and criminal penalties, as appropriate, to the full extent provided by state law, and this chapter. Such liability may include, but shall not be limited to, liability for administrative civil penalties as provided in Health and Safety Code Section 25514.5. The remedies provided for under this section are in addition to any the city or any person might have under other applicable laws.

(b) The administrator may cooperate with the city attorney and/or district attorney in bringing judicial and/or administrative action to enforce any provision of this chapter. Such judicial and/or administrative actions may seek the penalties and relief to the full extent provided under law, including but not limited to the reasonable cost of the city and/or the district attorney's in prosecuting the enforcement action to the extent authorized by applicable law.

20.10.090 Public disclosure.

Due to the threat to the security of active hazardous material facilities posed by the disclosure of the information in the facility storage map, this information shall be maintained by city for law enforcement purposes only and shall not be made public. Public disclosure of this information could endanger the security of the facility or present a clear danger to public health and safety. The city shall not disclose this information to the public without the consent of the permittee or permit applicant unless ordered to do so by a court of competent jurisdiction. Permittee or permit applicant shall be deemed a real party in interest in any such action. Prompt notice of a lawsuit to compel disclosure shall be given by city to permittee or permit applicant. However, city shall be under no duty to prevent disclosures where the facility is closed, there has been any unauthorized discharge of hazardous materials stored in facility shown on such map or where such disclosure arises out of any official emergency response relating to the facility.

~~20.60.090. Relation to existing laws.~~

~~———— (a) ——— To the extent that the requirements of applicable law are amended from time to time, the administrator shall have the power to enforce the same.~~

~~———— (b) ——— The disclosure of hazardous materials information in accordance with the provisions of this chapter shall not in any way affect any other liability or responsibility of a handler of hazardous materials or waste with regard to safeguarding the health and safety of any employee, or any other person or the environment.~~

20.10.100. Indemnification.

The permittee shall indemnify, hold harmless and defend the city against any claim, cause of action, disability, loss, liability, damage, cost or expense, howsoever arising, that occurs by reason of an unauthorized discharge in connection with permittee's operations under this permit except as arises from city's sole willful act or sole active negligence.

20.10.110. Relation to existing laws.

(a) ——— To the extent that the requirements of applicable law are amended from time to time, the administrator shall have the power to enforce the same.

(b) ——— The disclosure of hazardous materials information in accordance with state and local regulations shall not in any way affect any other liability or responsibility of a handler of hazardous materials or waste with regard to safeguarding the health and safety of any employee, or any other person or the environment.