

ORDINANCE NO. 3022-13

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 Title 20 (Hazardous Materials), Chapters 20.04 through 20.56, inclusive, of the Sunnyvale Municipal Code are hereby repealed.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

Rebecca Moon, Assistant City Attorney

Title 20.

HAZARDOUS MATERIALS

Chapter 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;

(2) Aboveground Petroleum Storage Act;

(3) Underground Storage Tank Program;

(4) Hazardous Materials Release Response Plans and Inventories (Business Plans);

(5) California Accidental Release Prevention (CalARP) Program; and

(6) California Fire Code: Hazardous Material Management Plans and Inventory Statements.

(b) The city has exclusive, local jurisdiction within its boundaries to administer and enforce the requirements of the Unified Program.

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 Unified Program 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 Unified Program 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 Program.

(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 Unified Program 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 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 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 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.

(c) This chapter shall be implemented and enforced in accordance with any other requirements that are applicable to the Unified 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 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 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 Program and this chapter.

(b) The director or his/her designee shall be the administrator of the Unified 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.

20.10.100. 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.