

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 24, ARTICLE I,  
OF THE MOUNTAIN VIEW CITY CODE,  
RELATING TO HAZARDOUS MATERIALS

THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY  
ORDAIN AS FOLLOWS:

Section 1. Chapter 24 of the Mountain View City Code is hereby amended to read  
as follows:

**“CHAPTER 24 - HAZARDOUS MATERIALS**

**ARTICLE I. - HAZARDOUS MATERIALS PERMIT CODE**

**DIVISION I. - GENERAL PROVISIONS**

**SEC. 24.1.0. - Purpose.**

The purpose of this chapter is the protection of health, safety or welfare of persons,  
resources or property through the regulation of hazardous materials and other  
regulated materials.

**SEC. 24.1.1. - General obligation – Safety and care.**

a. No person, firm or corporation shall cause, suffer or permit the storage,  
handling or dispensing of hazardous materials or other regulated materials:

1. In a manner which violates a provision of this chapter or any other local,  
federal or state statute, code, rule or regulation relating to hazardous materials or other  
regulated materials; or

2. In a manner which causes, or poses a significant risk of causing, an  
unauthorized discharge of hazardous materials or other regulated materials or  
threatens the health, safety, or welfare of persons, resources or property.

**SEC. 24.1.2. - Specific obligation.**

a. Any person, firm or corporation which stores, handles or dispenses any hazardous or other material regulated by Sec. 24.2.0 which is not excluded by Sec. 24.2.1 shall obtain and keep current a hazardous materials permit.

b. All such hazardous or other regulated materials shall be stored, handled and dispensed in conformity with Division III of this chapter.

c. The storage, handling and dispensing of such hazardous or other regulated materials shall be in conformance with the approved hazardous materials business plan.

d. The fire department shall be the agency within the city having authority to enforce the provisions of this chapter and related state and federal laws and regulations referenced in this chapter.

**SEC. 24.1.3. - Definitions.**

Unless otherwise expressly stated, whenever used in this chapter, the following terms shall have the meanings set forth below:

a. "Abandoned," when referring to a storage facility, means out of service and not safeguarded in compliance with this chapter.

b. "Acutely hazardous materials" means any chemical designated as an extremely hazardous substance which is listed in Appendix A of Part 355 of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations (as referenced in California Health and Safety Code Division 20, Chapter 6.95, Article 2, Sec. 25532).

c. "Business" means an employer, self-employed individual, trust, firm, joint stock company, corporation, partnership or association. For purposes of this chapter, "business" includes a business organized for profit and a nonprofit business.

d. "California Electronic Reporting System (CERS)" is a web-based reporting system created by CalEPA for regulated facilities to electronically file required hazardous materials business plan (HMBP) information in accordance with CCR, Title 27.

e. "Chemical name" means the scientific designation of a substance in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the system developed by the Chemical Abstract Service (CAS).

- f. "City" means the City of Mountain View.
- g. "Combustible liquid" is a liquid having a closed-cup flashpoint at or above one hundred (100) degrees Fahrenheit. (Note: This is the California Fire Code definition; D.O.T. defines "combustible liquid" differently.)
- h. "Common name" means any designation or identification such as a code name, code number, trade name or brand name used to identify a substance other than by its chemical name.
- i. "Compressed gas cylinder" means a cylinder containing:
1. A gas or mixture of gases at an absolute pressure exceeding forty (40) pounds per square inch at seventy (70) degrees Fahrenheit;
  2. A gas or mixture of gases at an absolute pressure exceeding one hundred four (104) pounds per square inch at one hundred thirty (130) degrees Fahrenheit regardless of the pressure at seventy (70) degrees Fahrenheit; or
  3. A liquid having a vapor pressure exceeding forty (40) pounds per square inch at one hundred (100) degrees Fahrenheit.
- j. "Corrosive gas" means a gas as defined in Article II of this chapter.
- k. "Corrosive liquid" means:
1. A liquid that has a pH equal to or greater than 12.5 or less than or equal to 2.0 and as defined in 173 of 49 CFR;
  2. Any liquid classified as corrosive by the U.S. Department of Transportation; or
  3. Any material exhibiting the characteristics of corrosivity in accordance with Title 22, California Code of Regulations § 66261.22.
- l. "Corrosive solid" means a solid that has a pH equal to or greater than 12.5 or less than or equal to 2.0 when hydrated with water and as defined in 173 of 49 CFR.
- m. "Cryogen" is a fluid that has a normal boiling point lower than minus one hundred thirty (-130) degrees Fahrenheit (minus ninety (-90) degrees Celsius) at 14.7 psi atmosphere (psia).

- n. "Dangerous when wet liquid" means a liquid as defined in 173 of 49 CFR.
- o. "Dangerous when wet solid" means a solid as defined in 173 of 49 CFR.
- p. "Dispense" means to pour or transfer a material from a container, tank or similar vessel whereby vapors, dusts, fumes, mists or gases could be liberated to the atmosphere.
- q. "D.O.T." is an abbreviation for department of transportation and refers to this federal agency.
- r. "Electronic reporting" means all regulated facilities must use an approved web-based reporting system to electronically file required hazardous materials business plan (HMBP) information. This includes, but is not limited to, CCR Title 27 Data Dictionary elements, facility data regarding hazardous materials regulatory activities, chemical inventories, underground and aboveground storage tanks, hazardous waste generation, and additional locally required information as necessary.
- s. "Explosive" means:
  - 1. Chemicals that cause a sudden, almost instantaneous release of pressure, gas and heat when subjected to sudden shock, pressure or high temperatures; or
  - 2. Materials or chemicals, other than blasting agents, that are commonly used or intended to be used for the purpose of producing an explosive effect.
- t. "Facility" means a building or buildings, appurtenant structures and surrounding land area used by a single business entity at a single location or site.
- u. "Flammable gas" is a gas at sixty-eight (68) degrees Fahrenheit or less at 14.7 psi atmosphere of pressure which is ignitable when in a mixture of thirteen (13) percent or less by volume with air or which has a flammable range with air of at least twelve (12) percent regardless of the lower limit.
- v. "Flammable liquid" is a liquid having a closed-cup flash point below one hundred (100) degrees Fahrenheit and having a vapor pressure not exceeding forty (40) psia at one hundred (100) degrees Fahrenheit.

w. "Flammable solid" means any of the following three (3) types of materials:

1. **Desensitized explosives that:**

(a) When dry are explosives of Class 1 other than those of compatibility Group A which are wetted with sufficient water, alcohol or plasticizer to suppress explosive properties; and

(b) Are specifically authorized by name either in Table 172.101 of 49 CFR or have been assigned a shipping name and hazard class by the associate administrator for hazardous materials safety;

2. **Self-reactive materials.** These are materials that are liable to undergo, at normal or elevated temperatures, a strongly exothermal decomposition caused by excessively high transport temperatures or by contamination; and

3. **Readily combustible solids.** These are materials that:

(a) Are solids which may cause a fire through friction such as matches;

(b) Show a burning rate faster than 2.2 mm per second when tested in accordance with 173 of 49 CFR; or

(c) Any metal powders that can be ignited and react over the whole length of a sample when tested in accordance with 173 of 49 CFR.

x. "Handle" means all of the following:

1. (a) To use, generate, process, produce, package, treat, store, emit, discharge or dispose of a hazardous material in any fashion.

(b) For the purposes of subparagraph (a), "store" does not include the storage of hazardous materials incidental to transportation, as regulated in Title 49 of the Code of Federal Regulations.

2. (a) The use or potential use of a quantity of hazardous materials by the connection of a marine vessel, tank vehicle, tank car or container to a system or process for any purpose.

(b) For the purposes of subparagraph (a), the use or potential use does not include the immediate transfer to or from an approved atmospheric tank or approved portable tank that is regulated as loading or unloading incidental to transportation by Title 49 of the Code of Federal Regulations.

y. "Handler" means any person, firm or corporation which handles a hazardous material.

z. "Hazard class" means dangerous when wet liquids, dangerous when wet solids, flammable liquids, combustible liquids, flammable solids, oxidizer liquids, oxidizer solids, oxidizer gases, organic peroxide liquids, organic peroxide solids, corrosive liquids, corrosive solids, corrosive gases, flammable gases, nonflammable gases, poisonous material gases, poisonous material liquids, poisonous material solids, infectious substances, radioactive materials, cryogens, miscellaneous hazardous material liquids, miscellaneous hazardous material solids, spontaneously combustible liquids, spontaneously combustible solids.

aa. "Hazardous material" means any material which is subject to regulation pursuant to Division II of this chapter. A mixture shall be deemed to be a hazardous material if it either is:

(1) A waste and contains any material regulated pursuant to Article II of this chapter;

(2) A nonwaste (other than toxic, highly toxic, moderately toxic or poisonous solids, liquids or gases) and contains one (1) percent by weight or more of any material regulated pursuant to Division II of this chapter; or

(3) Is a nonwaste and contains any amount of material regulated as a toxic, highly toxic, moderately toxic or poisonous solid, liquid or gas.

The definition of mixtures shall not apply to hazardous substances stored in underground storage tanks, and any amount of a hazardous substance in an underground storage tank shall be regulated as a hazardous material.

bb. "Hazardous materials business plan (HMBP)" means an electronically filed plan containing the information required pursuant to Sec. 25500 et seq. of the California Health and Safety Code, Title 27 of the California Code of Regulations, and a locally required Fire and Life Safety Plan, and additional locally required information as necessary.

cc. "Infectious substance" means a viable microorganism, or its toxin, which causes or may cause disease in humans or animals and includes those agents listed in 42 CFR 72.3 of the regulations of the Department of Health and Human Services or any other agent that causes or may cause severe, disabling or fatal disease. The terms "infectious substance" and "etiologic agent" are synonymous for the purposes of this chapter.

dd. "Miscellaneous hazardous material liquids" means any liquid which a handler or the city has a reasonable basis to believe it would be injurious to the health and safety of persons or property or be harmful to the environment if released into the workplace or environment and is not otherwise classified under any other hazard classes described in this chapter.

ee. "Miscellaneous hazardous material solids" means any solid which a handler or the city has a reasonable basis to believe it would be injurious to the health and safety of persons or property or be harmful to the environment if released into the workplace or environment and is not otherwise classified under any other hazard classes described in this chapter.

ff. "SDS" is an abbreviation for "safety data sheet" and refers to written or printed material concerning a hazardous material which is prepared in accordance with the provisions of 29 CFR 1910.1200.

gg. "Nonflammable gas" is any inert material or inert mixture that, when enclosed in a container, has an absolute pressure exceeding forty (40) psi at seventy (70) degrees Fahrenheit or, regardless of the pressure at seventy (70) degrees Fahrenheit, having an absolute pressure exceeding one hundred forty (140) psi at one hundred thirty (130) degrees Fahrenheit.

hh. "Normal temperature and pressure" means a temperature of sixty-eight (68) degrees Fahrenheit and pressure of one (1) atmosphere (14.7 psia).

ii. "Officer" means the employee assigned by the city to administer this chapter or any designee of such employee.

jj. "Organic peroxide liquid" means any organic liquid containing oxygen in the bivalent (-O-O-) structure and which may be considered a derivative of hydrogen peroxide where one (1) or more of the hydrogen atoms have been replaced by organic radicals.

kk. "Organic peroxide solid" means any organic solid containing oxygen in the bivalent (-O-O-) structure and which may be considered a derivative of hydrogen peroxide where one (1) or more of the hydrogen atoms have been replaced by organic radicals.

ll. "Oxidizer gas" means a gas that can support and accelerate combustion of other materials more than air does.

mm. "Oxidizer liquid" means a material that readily yields oxygen or other oxidizing gas, or that readily reacts to promote or initiate combustion of combustible materials.

nn. "Oxidizer solid" means a material that readily yields oxygen or other oxidizing gas, or that readily reacts to promote or initiate combustion of combustible materials.

oo. "Permit" means any hazardous materials permit issued pursuant to this chapter as well as any additional approvals thereto.

pp. "Permit quantity limit" means the maximum amount of hazardous material that can be stored or handled in a storage facility. Separate permit quantity limits will be set for each storage facility for which a permit is obtained in accordance with the requirements of this chapter.

qq. "Permittee" means any person, firm or corporation to whom a permit is issued pursuant to this chapter and any authorized representative, agent or designee of such person, firm or corporation.

rr. "Pipes" means pipeline systems which are used in connection with the storage or handling of hazardous materials exclusively within the confines of a facility and which are not intended to transport hazardous materials in interstate or intrastate commerce or to transfer hazardous materials in bulk to or from a marine vessel.

ss. "Poisonous material gas" means a material which is a gas at twenty (20) degrees Celsius or less and a pressure of 101.3 kPa (14.7 psi) (a material which has a boiling point of twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) or less at 101.3 kPa (14.7 psi)) and which:

1. Is known to be so toxic to humans as to pose a hazard to health during transportation, or
2. In the absence of adequate data on human toxicity is presumed to be toxic to humans because when tested on laboratory animals it has an LC<sub>50</sub> value of not more than five thousand (5,000) ml/m<sup>3</sup>.



tt. "Poisonous material liquid" means a liquid which is known to be so toxic to humans as to pose a hazard to health during transportation or which in the absence of adequate data on human toxicity:

1. Is presumed to be toxic to humans because it falls within any one (1) of the following categories when tested on laboratory animals:

(a) **Oral toxicity.** A liquid with an LC<sub>50</sub> for acute oral toxicity of not more than five hundred (500) mg/kg.

(b) **Dermal toxicity.** A material with an LC<sub>50</sub> for acute dermal toxicity of not more than one thousand (1,000) mg/kg.

(c) **Inhalation toxicity.**

i. A dust or mist with an LC<sub>50</sub> for acute toxicity on inhalation of not more than ten (10) mg/L; or

ii. A material with a saturated vapor concentration in air at twenty (20) degrees Celsius greater than or equal to one-fifth (1/5) of the LC<sub>50</sub> for acute toxicity on inhalation of vapors and with an LC<sub>50</sub> for acute toxicity on inhalation of vapors of not more than five thousand (5,000) ml/m<sup>3</sup>.

2. Is an irritating material, with properties similar to tear gas, which causes extreme irritation, especially in confined spaces.

uu. "Poisonous material solid" means a solid which is known to be so toxic to humans as to pose a hazard to health during transportation or which in the absence of adequate data on human toxicity:

1. Is presumed to be toxic to humans because it falls within any one (1) of the following categories when tested on laboratory animals:

(a) **Oral toxicity.** A liquid with an LC<sub>50</sub> for acute oral toxicity of not more than five hundred (500) mg/kg.

(b) **Dermal toxicity.** A material with an LC<sub>50</sub> for acute dermal toxicity of not more than one thousand (1,000) mg/kg.

(c) **Inhalation toxicity.**

i. A dust or mist with an LC<sub>50</sub> for acute toxicity on inhalation of not more than twenty (20) mg/L; or

ii. A material with a saturated vapor concentration in air at twenty (20) degrees Celsius greater than or equal to one-fifth (1/5) of the LC<sub>50</sub> for acute toxicity on inhalation of vapors and with an LC<sub>50</sub> for acute toxicity on inhalation of vapors of not more than five thousand (5,000) ml/m<sup>3</sup>.

2. Is an irritating material, with properties similar to tear gas, which causes extreme irritation, especially in confined spaces.

vv. "Portal" means a web-based database for regulated facilities to electronically report required hazardous materials business plan (HMBP) and additional locally required information.

ww. "Primary containment" means the first level of containment (i.e., the inside portion of that container which comes into immediate contact on its inner surface with the hazardous materials being contained).

xx. "Product-tight" means impervious to the hazardous material which is contained, or is to be contained, so as to prevent the seepage of the hazardous material from the primary containment. To be product-tight, the containment shall be made of or created by a material that is not subject to physical or chemical deterioration by the hazardous material or naturally occurring contaminants being contained.

yy. "Radioactive" means any material or combination of materials that has a specific activity greater than 0.002 microcuries per gram.

zz. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or dispensing outside of the primary containment.

aaa. "Retail sales occupancy" means the occupancy or use of a building or structure or any portion thereof for displaying, selling or buying of goods, wares or merchandise.

bbb. "SIC code" means the identification number assigned by the Standard Industrial Classification Code to specific types of businesses.

ccc. "Spill control" means rooms, buildings or areas used for the storage of hazardous material liquids with provisions to prevent the flow of liquids to adjoining areas.

ddd. "Spontaneously combustible liquid" means:

1. A pyrophoric liquid. A pyrophoric liquid is a liquid that, even in small quantities and without an external ignition source, can ignite within five (5) minutes after coming in contact with air when tested according to 173 of 49 CFR.

2. A self-heating liquid. A self-heating liquid is a liquid that, when in contact with air and without an energy supply, is liable to self-heat. A liquid of this type exhibits spontaneous ignition or the temperature of the sample exceeds two hundred (200) degrees Celsius during the twenty-four (24) hour test period when tested in accordance with 173 of 49 CFR.

eee. "Spontaneously combustible solid" means:

1. A pyrophoric solid. A pyrophoric solid is a solid that, even in small quantities and without an external ignition source, can ignite within five (5) minutes after coming in contact with air when tested according to 173 of 49 CFR.

2. A self-heating solid. A self-heating solid is a solid that, when in contact with air and without an energy supply, is liable to self-heat. A solid of this type exhibits spontaneous ignition or the temperature of the sample exceeds two hundred (200) degrees Celsius during the twenty-four (24) hour test period when tested in accordance with 173 of 49 CFR.

fff. "Storage facility" is a facility that stores, handles or uses one (1) or a combination of tanks, sumps, reservoirs, wet floors, waste treatment facilities, pipes, vaults or other portable or fixed containers, used, or designed to be used, for the storage of hazardous materials or other regulated materials at a facility.

ggg. "STP" is an abbreviation for standard temperature and pressure and means zero (0) degrees Celsius, or thirty-two (32) degrees Fahrenheit, at one (1) atmosphere of pressure (14.7 psia).

hhh. "Sump" means a pit or well in which liquids collect.

iii. "Temporary" means not to exceed thirty (30) days.

jjj. "Threatened release" means a condition creating a substantial probability of harm when the probability and potential extent of harm make it reasonably necessary to

take immediate action to prevent, reduce or mitigate damages to persons, property or the environment.

kkk. "Trade secret" means trade secrets as defined in subdivision (d) of Sec. 6254.7 of the Government Code and Sec. 1060 of the Evidence Code.

lll. "Unauthorized discharge" means any release or emission of any hazardous material or other regulated material which does not conform to the provisions of this chapter, unless such release is in accordance with the release regulations of the Bay Area Air Quality Management District and California Air Resources Board, with a National Pollutant Discharge Elimination System Permit, with waste discharge requirements established by the Regional Water Quality Control Board pursuant to the Porter-Cologne Water Quality Act, or with local sewer pretreatment requirements for publicly owned treatment works

#### **SEC. 24.1.4. - Professional assistance for city determinations.**

Whenever the approval or satisfaction of the city may be required in this chapter for a design, monitoring, testing, evaluation, or technical submittal by an applicant or permittee, the city may, in its discretion, require such applicant or permittee, at such applicant's or permittee's sole cost and expense, to retain a suitably qualified independent engineer, or chemist, or other appropriate professional consultant, acceptable to the city, for the purpose of evaluating and rendering a professional opinion respecting the adequacy of such submittal, design, monitoring, testing or evaluation to achieve the purposes of this chapter. The city shall be entitled to rely on such evaluation and/or opinion of such engineer, chemist or professional consultant in making the relevant determinations provided for in this chapter.

### **DIVISION II. - MATERIALS REGULATED**

#### **SEC. 24.2.0. - Materials regulated.**

The materials regulated by this chapter shall consist of any materials that, because of their quantity, concentration or physical or chemical characteristics, pose a significant present or potential physical or health hazard to human health and safety, property or the environment if released into the workplace or the environment. These shall include, but not be limited to:

a. Any material regulated under Sec. 25501 or 25532 of Chapter 6.95 of the California Health and Safety Code.

b. Any material regulated under Sec. 25281 of Chapter 6.7 of the California Health and Safety Code.

- c. Any material regulated by the California Fire Code.
- d. Any material regulated under Division 20, Chapter 6.5, of the California Health and Safety Code.
- e. Any material regulated under Chapter 6.67, Sec. 25270.5(c), of the California Health and Safety Code.
- f. Any material which a handler or the city has a reasonable basis for believing would be injurious to the health, safety and welfare of persons or property or harmful to the environment if released into the workplace or the environment.

**SEC. 24.2.1. - Exclusions.**

This chapter excludes the following materials from hazardous materials permit fees. These materials may be required to be reported or included in a HMBP when the fire chief or his/her designee so determines and where such action would be appropriate and consistent with achieving the general obligations of protecting public health, safety and welfare. In addition, the following materials shall comply with all applicable requirements in Division III (Storage, Handling and Dispensing Standards) of this chapter.

a. **Retail products.** Hazardous materials contained solely in a consumer product, handled at, and found in, a retail sales occupancy and intended for sale to, and for the use by, the public. The exemption provided in this paragraph shall not apply to a consumer product handled at the facility which manufactures that product, or a separate warehouse or distribution center of that facility, or where a product is dispensed on the retail sales occupancy.

b. **Cryogenic, refrigerated, or compressed gas.** Cryogenic, refrigerated or compressed gas in quantities of less than one thousand (1,000) cubic feet at standard temperature and pressure, if the gas is any of the following:

1. Oxygen, nitrogen and nitrous oxide ordinarily maintained by a physician, dentist, podiatrist, veterinarian, pharmacist or emergency medical service provider at his or her place of business.

2. Carbon dioxide used in the direct dispensing of food or beverages at restaurants, delicatessens, pubs or other public eating or drinking establishments.

3. Nonflammable refrigerant gases, as defined in the California Fire Code, that are used in refrigeration systems.

4. Gases used in closed fire suppression systems.

c. **Stationary storage battery systems.** Batteries used for facility standby power, emergency power or uninterrupted power supplies in which the liquid electrolyte in the cells is immobilized (i.e., AGM-absorptive glass mat, gel cell) and contain less than fifty-five (55) gallons (aggregate) quantity, or not more than five hundred (500) pounds (aggregate) quantity for lithium-ion and lithium metal polymer.

d. **Fire department and emergency response organizations.** Compressed air in cylinders, bottles and tanks used for the purpose of emergency response and safety.

e. **Refrigerant gases.** Refrigerant gases other than ammonia or flammable gas in a closed cooling system, that are used for comfort or space cooling for computer rooms.

f. **Minimum quantities.** \*Hazardous materials whose aggregate quantity in a hazard class does not exceed the limits specified below:

Maximum Quantity	Hazard Class
10 gallons	Miscellaneous hazardous material liquid
10 gallons	Combustible liquid
10 gallons	Corrosive liquid
10 gallons	Flammable liquid
10 gallons	Oxidizer liquid
50 pounds	Miscellaneous hazardous material solid
50 pounds	Corrosive solid
50 pounds	Flammable solid
50 pounds	Oxidizer solid
199 cubic feet	Nonflammable gas
199 cubic feet	Flammable gas

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\* Minimum quantity exclusions do not apply to hazardous substances stored in underground storage tanks.

g. **Exemption.** The city shall exempt any material from the requirements of this chapter where it has been demonstrated to the satisfaction of the city that the material in the quantity and/or solution stored does not present a significant actual or potential hazard to the public health, safety or welfare.

### **SEC. 24.2.2. - Underground storage tanks.**

This chapter hereby adopts by reference: Chapter 16 of Division 3 of Title 23 of the California Code of Regulations "Underground Storage Tank Regulations," Sec. 25280-25299.8 of Chapter 6.7 of Division 20 of the California Health and Safety Code "Underground Storage of Hazardous Substances," applicable federal law and all other laws, regulations and guidelines adopted thereto regulating the storage of hazardous substances in underground storage tanks.

The city may adopt and enforce any regulation, requirement or standard of performance that is more stringent than a regulation, requirement or standard of performance in effect under Chapter 16 of Division 3 of Title 23 of the California Code of Regulations, Chapter 6.7 of Division 20 of the Health and Safety Code or applicable federal law, if the regulation, requirement or standard of performance is consistent with these laws and with the general obligation of protecting health, safety and welfare of persons, resources or property.

In no case shall any regulation, requirement or standard of performance for hazardous substances stored in underground storage tanks be less restrictive than the state and federal laws and regulations cited above. In cases where requirements in this chapter conflict with the state and federal requirements for hazardous substances stored in underground storage tanks cited above, the more restrictive shall apply.

This chapter shall not be construed to preclude or deny the right of the city to regulate underground storage tanks which are not subject to state or federal laws or regulations.

### **SEC. 24.2.3. - Aboveground storage tanks.**

This chapter hereby adopts by reference California Health and Safety Code Division 20, Chapter 6.67, Sec. 25270.5(c), applicable federal law, and all other laws, regulations and guidelines adopted thereto regulating aboveground storage tanks. The city may adopt and enforce any regulation, requirement or standard of performance that is more stringent than a regulation, requirement or standard of performance in effect under the state and federal laws and regulations cited in this section if the regulation, requirement or standard of performance is consistent with these laws and with the general obligation of protecting health, safety and welfare of persons, resources or property.

In no case shall any regulation, requirement or standard of performance for aboveground storage tanks be less restrictive than the state and federal laws and regulations cited above. In cases where requirements in this chapter conflict with the

state or federal requirements for aboveground storage tanks cited above, the more restrictive shall apply.

This chapter shall not be construed to preclude or deny the right of the city to regulate aboveground storage tanks which are not subject to state or federal laws or regulations.

#### **SEC. 24.2.4. - Hazardous waste treatment.**

This chapter hereby adopts by reference Division 4.5, Title 22 of the California Code of Regulations (Department of Toxic Substances Control), California Health and Safety Code Division 20, Chapter 6.5, applicable federal law, and all other laws, regulations and guidelines adopted thereto regulating hazardous waste treatment.

The city may adopt and enforce any regulation, requirement or standard of performance that is more stringent than a regulation, requirement or standard of performance in effect under the state and federal laws and regulations cited in this section if the regulation, requirement or standard of performance is consistent with these laws and with the general obligation of protecting health, safety and welfare of persons, resources or property.

In no case shall any regulation, requirement or standard of performance for hazardous waste treatment be less restrictive than the state and federal laws and regulations cited above. In cases where requirements in this chapter conflict with the state or federal requirements for hazardous waste treatment cited above, the more restrictive shall apply.

### **DIVISION III. - STORAGE, HANDLING AND DISPENSING STANDARDS**

#### **SEC. 24.3.0. - Storage, handling and dispensing of hazardous or other regulated materials.**

Storage, handling and dispensing of hazardous or other regulated materials shall be in conformance with this division. In the absence of direct regulation by this division, other appropriate regulations, standards, laws, ordinances or other nationally recognized and accepted methods of good practice may be required when storage, handling or dispensing practices do not meet the purpose and general obligation of this chapter to protect the public health, safety and welfare and the environment. In the event of conflicting authorities or conflicts with other codes, the more restrictive shall apply.

a. **Design, construction and installation of hazardous materials storage facilities.** All storage facility installation, construction, repair or modification, closure



and removal shall be completed under permit to the satisfaction of the city. The city shall have the discretion to exempt an applicant from any specific requirement other than those for underground storage tanks or to impose reasonable additional or different requirements based on other appropriate regulations, standards, laws, ordinances or other nationally recognized and accepted methods of good practice in order to better secure the purpose and general obligation of this chapter for protection of public and environmental health, safety and welfare.

b. **General housekeeping.** Areas where hazardous or other regulated materials are stored (including empty containers previously storing hazardous materials) shall be neat and orderly and not obstruct exits or travel pathways.

c. **Monitoring (leak detection).**

1. All storage facilities containing hazardous or other regulated materials which are liquids or solids at normal temperature and pressure shall be designed and constructed with leak detection systems capable of detecting escape of the hazardous or other regulated materials from the primary containment. No facility shall be placed into operation without an approved leak detection system.

2. Monitoring shall include visual inspection of the primary containment wherever practical; however, if the visual inspection is not practical, an alternative method of monitoring each storage facility on a monthly or more frequent basis may be approved by the city. The city will consider: (a) the magnitude and severity of the potential effects of discharges; (b) the reliability of the monitoring method or device based on past use history; (c) the quality of the installation of the monitoring device and associated hardware and software; (d) the ability of the permittee to properly perform or use the monitoring method or device; (e) the ability of the permittee to maintain the monitoring device in proper working order; (f) the quantity and quality of the manufacturer's testing and performance specifications; and (g) the quality and quantity of third-party testing of the monitoring method or device when determining the required monitoring method or device and monitoring frequency for a storage facility. Proposed monitoring methods and devices shall be approved by the city prior to installation and use by the permittee or applicant.

3. Method(s) of monitoring may include, but are not limited to, pressure testing, vacuum testing, hydrostatic testing, liquid sensors, pressure sensors, flow sensors and vapor analysis within well(s). Well installation shall be approved by the city and the Santa Clara Valley Water District.

4. Whenever monitoring devices are provided, they shall be connected to attention-getting visual and audible alarms. The alarms shall be located in areas normally staffed with personnel trained in emergency response procedures. Whenever

monitoring devices or methods are provided, they shall be fully functional at all times. Facility owners/operators shall be able to provide back-up monitoring devices or methods approved by the city to be used in the event of failure of the primary monitoring system.

5. Whenever monitoring devices are provided they shall be tested at one of the following frequencies: (a) not less than annually; (b) in accordance with the approved manufacturer's requirements; or (c) in accordance with approved recognized industry standards.

6. Monitoring devices that have not been installed in the city or do not have a proven track record of use as determined by the fire chief or his/her designee may be approved by the city for up to six (6) months on a trial basis. Should the monitoring device not meet the owner/operator's minimum monitoring requirements, either due to faulty equipment, faulty installation, the inability of the device to meet the manufacturer's claims or specifications or other administrative or engineering problems, the owner/operator shall be required to remove the temporary monitoring device from service and install an approved monitoring device or method within fifteen (15) working days.

d. **Spill control for hazardous material liquids.** Rooms, buildings or areas used for storage of hazardous material liquids shall be provided with spill control to prevent the flow of liquids to adjoining areas. Floors in indoor locations and similar surfaces in outdoor locations shall be constructed to contain a spill from the largest single vessel by one (1) of the following methods:

1. Liquid-tight sloped or recessed floors in indoor locations or similar areas in outdoor locations.

2. Liquid-tight floors in indoor locations or similar areas provided with liquid-tight raised or recessed sills or dikes.

3. Sumps and collection systems.

4. Other approved engineered systems. Except for surfacing, the floors, sills, dikes, sumps and collection systems shall be constructed of noncombustible material and the liquid-tight seal shall be compatible with the material stored. When liquid-tight sills or dikes are provided, they are not required at perimeter openings having an open-grate trench across the opening that connects to an approved collection system.

**SEC. 24.3.1. - Abandoned storage facilities.**

- a. No storage facility shall be abandoned.
- b. Storage facilities which are temporarily out of service, and are intended to be returned to use, must continue to be monitored and inspected.
- c. Any storage facility which is not being monitored and inspected in accordance with this chapter must be closed or removed in a manner approved by the city in accordance with Sec. 24.7.2.
- d. Any person, firm or corporation having an interest, including a leasehold interest, in real property and having reason to believe that an abandoned storage facility is located upon such property shall make a diligent effort to locate such storage facility and take necessary actions to comply with this section.
- e. Whenever an abandoned storage facility is located, a plan for the closing or removing or the upgrading and permitting of such storage facility shall be filed within ninety (90) days of its discovery. A closure plan shall conform to the standards specified in Sec. 24.7.2.

**SEC. 24.3.2. - Maintenance, repair or replacement.**

- a. Permittee will carry out maintenance, ordinary upkeep, and minor repairs in a careful and safe manner. No permit or other approval will be required for such maintenance and upkeep.
- b. Any substantial modification or repair of a storage facility other than minor repairs or emergency repairs shall be in accordance with plans to be submitted to the city and approved in accordance with Sec. 24.3.0.a. prior to the initiation of such work.
- c. Permittee may make emergency repairs to a storage facility in advance of seeking an additional permit approval whenever an immediate repair is required to prevent or contain an unauthorized discharge or to protect the integrity of the containment. However, within five (5) working days after such emergency repairs have been started, permittee shall seek approval by submitting drawings or other information adequate to describe to the city the repairs.
- d. Replacement of any storage facility for hazardous materials or other regulated materials must be in accordance with this chapter, including secondary containment requirements for new facilities in Sec. 24.3.0 of this chapter.

**SEC. 24.3.3. - Spill prevention and cleanup equipment.**

Spill prevention and cleanup equipment shall be provided which is reasonable and appropriate for potential emergencies presented by the stored hazardous or other regulated materials. Such equipment shall be regularly tested and adequately maintained. Training in the use of such equipment shall be in accordance with Sec. 24.4.2.

**DIVISION IV. - HAZARDOUS MATERIALS BUSINESS PLAN**

**SEC. 24.4.0. - Hazardous materials business plan.**

a. Each applicant for a permit pursuant to this chapter shall electronically file a plan, for the city's approval, to be known as a hazardous materials business plan (HMBP), which shall demonstrate the safe storage and handling of hazardous or other regulated materials and emergency response capabilities of the applicant. The HMBP shall be electronically reported in accordance with Division I of this chapter. Approval of the HMBP shall mean the facility has provided adequate information for the purposes of evaluating the permit approval. Such approval shall not be understood to mean the city has made an independent determination of the adequacy of that which is described in the HMBP or that the applicant has complied with other codes or ordinances.

b. Within thirty (30) days of any of the events listed below, any business subject to this chapter shall submit an amendment to the HMBP:

1. Any changes in the information required on the Business Owner/Operator portion of the HMBP;

2. Any change in the information required on the facility storage map portion of the HMBP;

3. Any change of one hundred (100) percent or more in the quantity or any change in the quantity range of a previously disclosed hazardous or other regulated material, or the handling of a previously undisclosed hazardous or other regulated material required on the hazardous materials inventory statement portion of the HMBP;

4. Any change in the information required on the emergency response plan (contingency plan) portion of the HMBP.

c. If the city determines the handler's HMBP is deficient in any way, the city shall notify the handler of these defects. The handler shall submit a corrected HMBP within thirty (30) days of this notice. If a handler fails after reasonable notice to amend

their electronically submitted HMBP to accurately disclose the required information, the city may take appropriate action to enforce this chapter, including the imposition of civil and criminal penalties specified in this chapter.

**SEC. 24.4.1. - Public record access and trade secrets.**

The HMBP is a public record except for facility storage maps, or as otherwise specified. The information contained therein is subject to trade secret protection pursuant to Health and Safety Code Sec. 25511. The city may refuse access to this record when such disclosure could jeopardize ongoing civil or criminal investigation or litigation. Persons requesting access to any portion of the HMBP will be required to complete an application for release of information. The application will require:

1. The person's name, address and telephone number;
2. The name and address of the person, business, or governmental agency such person represents;
3. The purpose for which the access is requested; and
4. The identity of the specific files to be examined or request to be copied, including street address and company name (Health and Safety Code Sec. 25506 requires all HMBPs to be indexed by street address and company name).

The fire chief or his/her designee will have ten (10) days prior to permitting the review or providing copies to: verify the applicant's identity; determine whether any of the materials requested are exempt from disclosure; and, if necessary, inform the business whose HMBP has been requested.

**SEC. 24.4.2. - Hazardous materials business plan (HMBP).**

The hazardous materials business plan (HMBP) must be submitted electronically and updated annually at a minimum. The HMBP shall include the data fields and information required by California Health and Safety Code Sec. 25500 et seq., Title 27 of the California Code of Regulations, a locally required Fire and Life Safety Plan, as well as any additional fields required by the city.

- a. **Facility storage map.** The facility storage map shall be of a legible scale. The information is provided for purposes of ensuring the suitable and secure storage of hazardous or other regulated materials and for the protection and safety of emergency response personnel of the city. The city shall take reasonable precautions to ensure the confidentiality of the information provided on the facility storage map and shall not

disclose this information to the public unless ordered to do so by a court of competent jurisdiction.

1. The facility storage map shall depict the entire hazardous materials storage facility, including all interior and exterior spaces/rooms.

2. The facility storage map shall identify (numerically or alphabetically) the location of each hazardous materials storage location. This location shall correlate with the hazardous materials inventory statement.

3. The facility storage map shall indicate the locations of emergency equipment related to each storage facility, building orientation, locations of emergency utilities (gas, water, electric), storm drain locations, sanitary sewer locations, lockbox (Knox box) locations, locations of SDSs, and adjacent and cross streets, and the general purpose/use of the other areas within each facility.

4. Applicant or permittee may be required to provide such other information on the facility storage map as the fire chief or his/her designee deems necessary and consistent with the general obligation of this chapter for protection of the health, safety or welfare of persons, resources or property.

**b. Variation in information.**

1. Additional information may be required in the HMBP where such information is reasonably necessary to meet the intent of this chapter.

2. Requirements for information in the HMBP may be waived where such information is not reasonably necessary to meet the intent of this chapter.

**SEC. 24.4.3. - Supplemental requirements for emergency response plans (contingency plans).**

a. In addition to the HMBP requirements set forth in this chapter, any person, firm or corporation which stores, uses or handles hazardous or other regulated material in excess of the exempt amounts specified in Sec. 24.2.1, shall establish and implement a plan for emergency response (contingency plan) for a release or threatened release of a hazardous or other regulated material pursuant to this section. The emergency response plan (contingency plan) shall be submitted electronically with the HMBP.

b. Unless the facility is otherwise exempt as set forth in this chapter, the following information shall be provided:

1. Emergency response plans and procedures in the event of a reportable release or threatened release of a hazardous or other regulated material which includes, but shall not be limited to, the following:

(a) Immediate notification to the city, the city fire department and the State Office of Emergency Services;

(b) Procedures for the mitigation of a release or threatened release to minimize any potential harm or damage to persons, property or the environment;

(c) Evacuation plans and procedures for the business site, including immediate audible notice and warning to all persons on the site.

c. Training shall be provided for all new employees, in addition to annual training, including refresher courses for all employees, in safety procedures to be utilized in the event of a release or threatened release of a hazardous or other regulated material. Such training shall include, but not be limited to, familiarity with the plans and procedures specified above. These training programs shall take into consideration the technical and managerial responsibilities of each employee.

Responsible persons shall be designated and trained to be liaison personnel for the fire department. These persons shall aid the fire department in preplanning emergency responses and identification of the locations where hazardous or other regulated materials are located, shall have access to material safety data sheets and shall be knowledgeable in the site emergency response plan and procedures.

d. Any business required to file a pipeline operations contingency plan in accordance with the California Pipeline Safety Act of 1981 (Chapter 5.5 (commencing with Sec. 51010) of Part 3 of Division 1 of Title 5 of the Government Code) and the regulations of the Department of Transportation, found in Part 195 of Title 49 of the Code of Federal Regulations, may file a copy of those plans with the city in lieu of the emergency response plan specified in subdivision (a), above.

e. Any business operating a farm exempted by Paragraph (5) of subdivision (b) of Sec. 25503.5 of the Health and Safety Code from filing the information specified in subdivisions (a) and (b) shall, notwithstanding this exemption, provide the training programs specified in subdivision (c).

f. Emergency response plans and procedures shall be available for public inspection during regular working hours, as described under Sec. 24.4.1, except for

those portions of such plans, including any maps of the facility as described in this chapter, specifying the precise location where hazardous or other regulated materials are stored and handled on-site.

#### **SEC. 24.4.4. - Fire life safety plan requirements.**

In addition to the HMBP requirements set forth in this chapter, any person, firm or corporation which stores, uses or handles hazardous or other regulated material in excess of the exempt amounts specified in Sec. 24.2.1 shall establish and implement a Fire Life Safety Plan. The Fire Life Safety Plan shall be submitted electronically with the HMBP and contain the following:

1. Total building square footage, number of floors/stories and indicate the use of a mezzanine and/or basement if present.

2. Information about the buildings' fire protection systems, including fire alarm systems, fire sprinkler systems, engineered systems and any specialized fire protection systems such as fire pumps, standpipes, heat and smoke detectors and private hydrants.

3. Information regarding special uses or processes that require Fire Code operating permits.

### **DIVISION V. - RESPONSIBILITY**

#### **SEC. 24.5.0. - Reporting unauthorized discharge.**

a. **Liquids and solids at normal temperature and pressure.** As soon as any person in charge of a storage facility or responsible for emergency response for a facility has knowledge of any confirmed or unconfirmed unauthorized discharge of a hazardous or other regulated material which is liquid or solid at normal temperature and pressure, such person shall take all necessary steps to ensure the discovery, containment and cleanup of such discharge and shall notify the city of the occurrence as required by this subsection.

1. **Confirmed unauthorized discharge.**

(a) **Recordable unauthorized discharge.** Any recordable unauthorized discharge shall be contained and safely disposed of in an appropriate manner and such occurrence and the response thereto shall be recorded in the person's, firm's or corporation's monitoring records. A recordable unauthorized discharge is any unauthorized discharge of a hazardous or other regulated material which meets all of the following criteria:



i. The discharge is from a primary containment to a secondary containment or to a rigid aboveground surface covering capable of containing the discharge until cleanup of the hazardous or other regulated material is completed; and

ii. The discharge is able to be adequately cleaned up before it escapes from such secondary containment or such aboveground surface, but if the cleanup requires more than eight (8) hours, it becomes a reportable discharge in accordance with Subsection 24.5.0.a.1(b) below; and

iii. There is no increase in the hazard of fire or explosion, nor is there any production of a flammable or poisonous gas, nor is there any deterioration of such secondary containment or such rigid, aboveground surface.

iv. An otherwise recordable unauthorized discharge does not need to be recorded if the discharge is not the result of the deterioration or failure of the primary container, the quantity discharged is less than one (1) ounce by weight and the discharge can be cleaned up within fifteen (15) minutes.

(b) **Reportable unauthorized discharge.** Any unauthorized discharge which is determined not to be recordable under Subsection 24.5.0.a.1(a) above, must immediately be reported to city's fire department via the 9-1-1 emergency number. The reporting party shall indicate the ability of the responsible party to contain and dispose of the hazardous or other regulated material, the estimated time it will take to complete containment and disposal, and the degree of hazard created. The city may verify that the hazardous or other regulated material is being adequately contained and appropriately disposed. At any time the city determines the party performing the containment or disposal: (a) is not adequately containing or disposing of such hazardous or other regulated materials; (b) is not adequately trained to do so; (c) does not have adequate resources or supplies to do so; or (d) does not have a practical or safe containment or disposal plan, the city shall have the power and authority to undertake and direct an emergency response in order to protect the public health, safety and/or welfare and the environment. Costs associated with such emergency response shall be borne by the owner, operator or other person responsible for the unauthorized discharge.

Within fifteen (15) calendar days of a reportable discharge, the responsible party shall submit a written report to the city, including:

i. A description of the incident, including actions taken by facility personnel during and immediately following the reportable discharge;

ii. A determination of the cause or causes of the reportable discharge;

iii. Administrative and engineering controls which the responsible party proposes to implement to reduce the likelihood of a reportable discharge recurring;

iv. The target date for completing implementation of such controls;  
and

v. The signature of a corporate officer of the responsible facility.

**2. Unconfirmed unauthorized discharge.**

(a) **Indication of loss of inventory.** Whenever a material balance, inventory record, or monitoring detection system employed as a monitoring technique under the HMBP indicates a loss of hazardous or other regulated material, and no unauthorized discharge has been confirmed by other means, the responsible party shall immediately record such discrepancy in his/her monitoring records, immediately notify the fire department's environmental safety division of the discrepancy, and determine, within five (5) business days, whether or not there has been an unauthorized discharge. If, before the end of such period, it is determined there has been no unauthorized discharge, an entry explaining the occurrence shall be made in the responsible party's monitoring records. Where the responsible party has not been able, within such period, to determine there has been no unauthorized discharge, an unauthorized discharge is deemed confirmed and the responsible party shall proceed in accordance with Subsection 24.5.0.a.1(b) above.

(b) **Test results.** Whenever any test results suggest a possible unauthorized discharge, and no unauthorized discharge has been confirmed by other means, the responsible party shall immediately notify the environmental safety division of the possible discharge and shall perform two (2) retests, at least twenty-four (24) hours apart, within five (5) business days. If both retest results establish there has been no unauthorized discharge, the results of all three (3) tests shall be recorded in the responsible party's monitoring records. If it has not been established within such period that there has been no unauthorized discharge, an unauthorized discharge is deemed confirmed and the responsible party shall proceed in accordance with Subsection 24.5.0.a.1(b) above.

(c) **Fire.** Whenever a fire occurs in a facility which has or should have a hazardous materials permit, regardless of whether or not any hazardous or other regulated materials were involved, the responsible party shall immediately notify the fire department via the 9-1-1 emergency number. Within fifteen (15) working days of the fire, the responsible party shall submit a written report to the city, including:

- i. A description of the incident, including the actions taken during and immediately following the fire by facility personnel;
- ii. A determination of the cause or causes of the fire;
- iii. Administrative and engineering controls which the responsible party proposes to implement to reduce the likelihood of a fire recurring;
- iv. The target date for completing implementation of such controls; and
- v. The signature of a corporate officer of the responsible facility.

If both a fire and hazardous materials release has occurred, only one (1) report need be submitted.

b. **Gases at normal temperature and pressure.** Any person in charge of a storage facility or responsible for emergency response for a storage facility, who has knowledge of any unauthorized discharge of a hazardous material which is a nonflammable gas at normal temperature and pressure, must immediately report such discharge to the city fire department via the 9-1-1 emergency number if such discharge presents a threat of imminent danger to public health, safety and/or the environment. All other gas releases shall be reported immediately to the city fire department via the 9-1-1 emergency number.

#### **SEC. 24.5.1. - Cleanup responsibility.**

Any person, firm or corporation responsible for releasing hazardous or other regulated material shall institute and complete all actions necessary to remedy the direct or potential effects of any unauthorized discharge. The city shall undertake actions to remedy the effects of such unauthorized discharge only if it determines it is reasonably necessary under the circumstances for the city to do so. The responsible party shall reimburse the city for all costs incurred by the city in remedying the effects of such unauthorized discharge, including the costs of fighting fires, to the extent allowed by law. This responsibility is not conditioned upon evidence of willfulness or negligence of the party storing or handling the hazardous or other regulated material(s) in causing or allowing such discharge or unsafe condition. Any responsible party who

undertakes action to remedy the effects of unauthorized discharge(s) shall not be barred by this chapter from seeking to recover appropriate costs and expenditures from other responsible parties except as provided by Sec. 24.5.2.

**SEC. 24.5.2. - Indemnification.**

The responsible party shall indemnify, hold harmless and defend the city against any claim, cause of action, disability, loss, liability, damage, cost or expense, howsoever arising, which occurs by reason of an unauthorized discharge or unsafe condition in connection with the responsible party's operations, except as arises from the city's sole active negligence.

**DIVISION VI. - INSPECTIONS AND RECORDS**

**SEC. 24.6.0. - Inspections by the city.**

The city may conduct inspections, at its discretion, for the purpose of ascertaining compliance with this chapter and causing to be corrected any conditions which would constitute any violation of this chapter or of any other statute, code, rule or regulation affecting the storage or handling of hazardous or other regulated materials.

Permittees are not required to disclose the identity of hazardous or other regulated materials protected as trade secrets pursuant to Sec. 24.4.1 to anyone other than city officials, except in the case of an emergency response or an unauthorized discharge related to the storage facility in which the trade secret material is contained.

a. **Right of entry.** Whenever necessary for the purpose of investigating or enforcing the provisions of this chapter, or whenever any enforcement officer has reasonable cause to believe that there exists in any structure or upon any premises, any condition which constitutes a violation of this chapter, said officers may enter such structure or premises at all reasonable times to inspect the same, or to perform any duty imposed upon any of said respective officers by law; provided that if such structure or premises be occupied, the officer shall first present proper credentials and request entry and, further provided, that if such structure or premises is unoccupied, the officer shall first make a reasonable attempt to contact a responsible person from such firm or corporation and request entry, except in emergency circumstances. If such entry is refused, the officer seeking entry shall have recourse to every remedy provided by law to secure entry.

b. **Inspections by city – Discretionary.** All inspections specified herein shall be at the discretion of the city and nothing in this chapter shall be construed as requiring the city to conduct any such inspection nor shall any actual inspection made imply a duty to conduct any other inspection. Furthermore, nothing in this chapter shall be

construed to hold the city or any officer, employee or representative of the city 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.

**SEC. 24.6.1. - Inspections by permittee.**

The permittee shall conduct regular inspections of its own facilities to assure compliance with this chapter and shall maintain logs or file reports in accordance with this chapter. The inspector conducting such inspections shall be qualified to conduct such inspections.

**SEC. 24.6.2. - Special inspections.**

In addition to the inspections specified above, the city may require the periodic employment of special inspectors to conduct an audit or assessment of permittee's facility to make a hazardous or other regulated material safety evaluation and to determine compliance with the provisions of this chapter.

a. The special inspector shall be a qualified person or firm who shall demonstrate expertise to the satisfaction of the city.

b. The special inspection report shall include an evaluation of the facilities and recommendations consistent with the provisions of this chapter where appropriate. A copy of the report shall be filed with the city at the same time that it is submitted to permittee.

c. Permittee shall, within thirty (30) days of said report, file with the city a plan to implement all recommendations, or shall demonstrate to the satisfaction of the city why such recommendations shall not be implemented.

**SEC. 24.6.3. - Substituted inspections.**

An inspection by an employee of any other public agency may be deemed by the city as a substitute for any requirement above.

**SEC. 24.6.4. - Maintenance of records.**

All records required by this chapter shall be maintained by the permittee for a period of not less than three (3) years. Said records shall be made available to the city during normal working hours and upon reasonable notice, or copies of these records shall be sent to the city, if the city so requests.

## DIVISION VII. - APPLICATIONS AND PERMITS

### SEC. 24.7.0. - Permit.

a. It shall be unlawful for any person, firm or corporation to store, use or handle any hazardous or other regulated materials in excess of the exempt amounts specified in Sec. 24.2.1 without first obtaining a permit for the storage and handling of the hazardous or other regulated materials. Furthermore, it shall be unlawful for any person, firm or corporation to store or handle hazardous or other regulated materials in quantities in excess of the quantities specified in the permit, or to violate any other requirement set forth in this chapter or in the permit.

b. The permit for hazardous or other regulated material storage, use and handling may include the following: (1) name and address of the permitted facility; (2) mailing address; (3) issue, revision and expiration dates of the permit; (4) type of permit (full-term, temporary or provisional); (5) maximum quantities and hazard classes of hazardous or other regulated materials allowed on site at any one time; and (6) compliance directives specifying maintenance and/or upgrade requirements and dates for complying with these requirements. The permit may impose any additional terms or conditions upon the applicant which the fire chief or his/her designee deems reasonable and necessary to carry out the purposes of this chapter.

c. A full-term permit may be issued to the applicant if:

1. The applicant has complied with all reporting requirements of this chapter;

2. The applicant has furnished all requested information, including a complete permit application as described in this chapter;

3. The fire chief or his/her designee determines there are adequate devices, equipment, chemicals, administrative controls, engineering controls and other facilities to safely store and handle the hazardous or other regulated materials;

4. The person(s) responsible for emergency spill response and control are adequately trained and capable of consistently meeting permit requirements; and

5. The applicant has paid all hazardous materials program fees.

d. Permits shall be valid for a term of no more than one year (365 days). Permit renewal shall occur annually. The applicant shall electronically submit an accurate and complete HMBP and pay all applicable hazardous materials program fees on or before the annual renewal deadline.

e. If the officer to whom the application has been made finds the proposal does not completely conform to the provisions of this chapter or meet the conditions of Sec. 24.7.0.c. above, the officer may approve a provisional permit, subject to conditions to be imposed by the officer. The applicant must be informed in writing of the reasons why a full-term permit was not issued.

f. A permit for temporary storage may be issued where storage does not exceed thirty (30) days and occurs no more frequently than every six (6) months. The storage, use, handling and dispensing standards of Division III, the HMBP reporting requirements of Division IV and the inspection and records requirements of Division VI may be modified as appropriate under these circumstances for the storage of hazardous or other regulated materials on a nonregular basis.

g. If the officer to whom the permit application has been made has cause to deny the issuance of a full-term permit and determines it would not be feasible or in the public interest to approve a temporary or provisional permit, the officer shall deny issuance of a permit. A permit shall be denied if the applicant fails to demonstrate adequate conformity to the provisions of this chapter, or if issuance of a permit would threaten the health, safety or welfare of the community, persons, resources or property. The decision to deny the permit shall be given to the applicant in writing setting forth the findings upon which the decision is based.

h. No permit shall become effective until the permit has been signed by the fire chief or his/her designee.

i. A change of ownership (including a transfer of the majority of shares in a corporate facility) of the hazardous materials storage facility requires the submittal of an amended permit application. The permit may be transferred to new owners of the same business only if the new owners accept responsibility for all obligations under this chapter and all permit conditions at the time of the transfer of the business and document such transfer in writing within thirty (30) days of transfer of ownership of the business. Such transfer shall be subject to the approval of the city.

j. Any permittee desiring to store, handle or dispense hazardous or other regulated materials which are not in conformance with the hazardous materials permit shall apply for and obtain an amended permit prior to any such storage, handling or dispensing.

k. The continued use of, and permit approval for, existing storage facilities is subject to review and modification or termination by the city whenever: (1) there has been any unauthorized discharge or significant reduction in the integrity of primary or secondary containment; (2) the permit is renewed; (3) significant changes in hazardous

materials processes occur; (4) there is a change of one hundred (100) percent or more in the quantity or any change in the quantity range of a previously disclosed hazardous or other regulated material, or the handling of a previously undisclosed hazardous or other regulated material; or (5) the city is required to implement programs or policies required by state or federal agencies.

l. The fire chief or his/her designee shall reinstate any suspended hazardous materials permit upon proof of the following:

1. Satisfactory ability to comply with all storage and handling requirements; and

2. The payment of costs, fines or penalties which may be assessed. The fire chief or his/her designee may require the permit holder to develop and implement a compliance schedule for any proposed modification of permit terms and conditions.

m. Notwithstanding Sec. 24.2.1 and in addition to those materials regulated pursuant to Sec. 24.2.0, a permit shall be required for the storage in an underground storage tank as defined by California Health and Safety Code Sec. 25281(y) of any material defined as a hazardous substance by California Health and Safety Code Sec. 25316.)

#### **SEC. 24.7.1. - Application for permit.**

a. Applicants for a permit to store, use, handle or dispense hazardous or other regulated materials shall electronically file a HMBP and obtain approval by the city for each facility storing, using, handling or dispensing the hazardous or other regulated materials in excess of the exempt amounts specified in Sec. 24.2.1

b. The HMBP shall serve as the basis of the hazardous materials permit application. Construction plans, specifications, calculations and other additional information may also be required as part of the application in order for the fire chief or his/her designee to determine the storage and handling of the hazardous or other regulated materials will be conducted in a manner which meets the purposes of this chapter.

c. Every application for the renewal of a permit or extension of a provisional permit shall be made at least thirty (30) days prior to the expiration date of such permit. If a timely application for renewal has been submitted, the permit shall remain in effect until the city has made its determination.



d. The officer to whom an application for a new or renewed permit is made may make such investigation of the applicant and the proposed facility or activity as such officer deems necessary to carry out the purposes of this chapter.

**SEC. 24.7.2. - Closure approvals.**

a. Persons, firms or corporations storing, using, handling or dispensing hazardous or other regulated materials in amounts exceeding the exempt amounts specified in Sec. 24.2.1 shall apply for approval to close such storage facility not less than thirty (30) days prior to the termination of the storage of hazardous or other regulated materials at the storage facility. This thirty (30) day period may be reduced or waived by the city if there are special circumstances justifying such waiver. The property owner of the property upon which the storage facility exists shall be responsible for the closure in the event of the facility being abandoned or when the facility operator has not complied with Sec. 24.7.0 and 24.3.1 of this chapter. Such closure plan shall be acceptable to the city. The closure plan shall adequately describe procedures for terminating the storage of hazardous or other regulated materials in each storage facility in a manner that:

1. Minimizes the need for further maintenance;
2. Verifies that any threat to public health or safety or to the environment from residual hazardous or other regulated materials in or from the storage facility is adequately minimized or eliminated. The basis for this verification may include, but is not limited to, visual inspections, records review, the analytical results of soil or groundwater samples, wipe samples, etc.; and
3. Demonstrates that hazardous or other regulated materials that are stored in the storage facility will be removed, disposed of, neutralized or reused in an appropriate manner, and in compliance with all applicable laws, ordinances, regulations and guidelines.

b. Upon completion of the closure plan, proof of proper removal and transport of all hazardous materials, tanks, sumps, reservoirs, containers and equipment which stored, handled or dispensed hazardous or other regulated materials shall be submitted. This may include, but is not limited to, hazardous waste manifests and bills of lading.

c. Upon completion of the closure plan, the fire chief or his/her designee may require the facility operator or property owner of facilities which stored, handled or dispensed poisonous or acutely hazardous materials to include one (1) of the following statements in the closure documentation, signed by an independent industrial hygienist:

1. "This facility has been adequately closed using currently acceptable practices and is in compliance with local, state and federal guidelines. In my professional opinion, remaining contamination (if any) poses an insignificant health risk based on the quantity, toxicity and location of the contamination, as well as the proposed use and potential activities of persons on the site"; or

2. "In my professional opinion, contamination has been found which may pose a significant health risk, based on the quantity, toxicity and location of the contamination, as well as the proposed use of the site and potential activities of persons on the site. Further remedial action is warranted to reduce this risk to acceptable levels and to comply with local, state and federal guidelines, regulations and laws."

#### **SEC. 24.7.3. - Fees.**

The city shall establish fees sufficient to recover its costs in administering this chapter and related state and federal laws and regulations referenced in this chapter, including the cost of providing hazardous materials services and implementing the hazardous materials ordinance. These fees shall include, but not be limited to, the cost of review of HMBPs, inspections, plan checks, facility closures and other program implementation and administrative costs. The fee schedule shall be adopted by resolution of the city council. No application shall be accepted unless and until the fees have been paid. The city may collect fees charged by the County of Santa Clara or the State of California for program implementation and administration pursuant to Certified Unified Program Agency legislation (Title 27, Division 1, Subdivision 4, Chapter 1 of the California Code of Regulations).

### **DIVISION VIII. - REMEDIAL ACTION**

#### **SEC. 24.8.0. - Compliance order.**

Unless the fire chief or his/her designee finds that an immediate suspension under Sec. 24.8.2 is necessary to protect the environment, public health, safety or welfare from imminent danger, the officer shall issue a compliance order for: Failure to comply with the provisions of this chapter, any permit conditions, any compliance directives or any provisions of the HMBP within the time specified in the inspection notice, permit or compliance directive; fraud, willful misrepresentation, or any willful inaccurate or false statement in applying for a new, amended or renewed permit; or fraud, willful

misrepresentation, or any willful inaccurate or false statement in any report required by this chapter.

The compliance order shall specify:

- (a) Dates when initial and follow-up inspections were conducted;
- (b) Provisions of this chapter, permit conditions, compliance directives, or provisions of the HMBP found to be in violation;
- (c) Inaccurate or false statements made in permit applications or reports;
- (d) Any applicable fines or other charges due for payment; and
- (e) Deadline dates for compliance and payment of fines or other charges.

Such notice shall be sent by certified mail to permittee. If the violation is not abated, corrected or rectified and all fines or other charges paid within the time specified, a notice of hearing shall be given.

**SEC. 24.8.1. - Suspension prior to hearing.**

Whenever the fire chief or his/her designee finds that suspension of a permit prior to a hearing for remedial action is necessary to protect the environment, public health or safety from imminent danger, the fire chief or his/her designee may immediately suspend any permit or take any immediate action necessary to curtail the imminent danger pending the hearing for remedial action. The fire chief or his/her designee shall immediately notify the permittee of such suspension by having a written notice of the suspension personally served on the permittee, the permittee's designated agent for service of process, or a competent person apparently in charge of such a business, who is at least eighteen (18) years of age. In the event the permittee is not personally served with the suspension notice, a copy of such notice shall be mailed to the business address listed on the HMBP. Permittee shall have the opportunity for a preliminary hearing with regard to such prehearing suspension within three (3) working days of receiving written notice of such suspension.

**SEC. 24.8.2. - Notice of hearing.**

A notice of hearing shall be given to the permittee, applicant or responsible party by the fire chief or his/her designee in writing, setting forth the time and place of the hearing, the ground or grounds upon which the hearing is based, the pertinent code section or sections, and a brief statement of the factual matters in support thereof. The notice shall be given at least fifteen (15) calendar days prior to the hearing date.

**SEC. 24.8.3. - Remedial action.**

If the fire chief or his/her designee, after the hearing, finds cause exists for remedial action, the fire chief or his/her designee shall impose one or more of the following:

- a. An order to correct the particular violation and pay fines or other charges specified in the order issued pursuant to Section 24.9.0;
- b. A revocation of the permit for the facility or for a storage facility and approval of a provisional permit;
- c. Suspension of the permit for the facility or for a storage facility for a specified period not to exceed six (6) months;
- d. Modification or addition of conditions of the permit;
- e. Revocation of the permit with no reapplication permitted for a specified period not to exceed five (5) years; and/or
- f. Such other criminal or civil actions as permitted by law.

Upon suspension or revocation of a hazardous materials permit, hazardous or other regulated materials shall be removed from the affected facility within thirty (30) days. Procedures for such removal shall require prior city approval.

**SEC. 24.8.4. - Transmittal of decision.**

Within ten (10) days of the hearing, the fire chief or his/her designee shall render a written opinion, stating the findings upon which the decision is based and the action taken, if any.

**SEC. 24.8.5. - Authority after suspension, revocation or expiration.**

The suspension, revocation or expiration of a permit issued under this chapter shall not prevent any proceedings to investigate such permit, any remedial action against such permittee or any proceeding against such permittee.

**SEC. 24.8.6. - Return of permit.**

In the event a permit issued under the provisions of this chapter is suspended or revoked, the permittee shall forward it to the issuing officer not later than the end of the third business day after notification of such suspension or revocation.

**DIVISION IX. - HEARINGS**

**SEC. 24.9.0. - Hearing procedures.**

Hearing procedures shall comply with the provisions of Mountain View City Code Chapter 1.

**DIVISION X. - ENFORCEMENT**

**SEC. 24.10.0. - Infractions and misdemeanors.**

Any person, firm or corporation, whether as an individual, officer, principal agent, employee or otherwise, violating or causing the violation of any of the provisions of this chapter, a notice of violation, a compliance directive or a hazardous materials permit may be prosecuted for an infraction or misdemeanor, in addition to any civil penalties as set forth in Sec. 24.10.2. Each day any violation of this chapter continues shall be regarded as a new and separate offense. The remedies provided in this chapter shall be cumulative and exclusive.

**SEC. 24.10.1. - Authorization for fire marshal, hazardous materials specialists and certain other designated employees to arrest violators.**

Those employees of the city, including, but not limited to, the fire marshal, hazardous materials specialists and certain other employees designated by the city manager or the fire chief, who have the duty of enforcing the Mountain View City Code and state laws pertaining to hazardous and toxic materials, are hereby authorized, in accordance with and pursuant to California Penal Code Sec. 836.5, 836.37 and 853.6, to arrest persons for violations of such ordinances or statutes and issue notice to appear citations as provided by law.

**SEC. 24.10.2. - Civil penalties.**

Any person, firm or corporation who intentionally or negligently violates any provision of this chapter, or fails to comply with any order issued thereunder, shall be liable for a civil penalty not to exceed one thousand (1,000) dollars per day for each violation which shall be assessed and recovered in a civil action brought in the name of the people by the city attorney or the district attorney. An unauthorized discharge

which is recordable and recorded in compliance with Sec. 24.5.0 shall not be a violation of this chapter for purposes of this section. In determining the penalty, the court may consider all relevant circumstances, including, but not limited to, the following:

- a. The extent of harm or potential harm caused by the violation;
- b. The nature and persistence of the violation;
- c. The length of time over which the violation occurred;
- d. The frequency of past violations;
- e. The permittee's record of maintenance;
- f. Corrective action, if any, taken by the permittee;
- g. The degree of noncompliance with this chapter; and
- h. The extent of negligence or willful misconduct of the person, firm or corporation violating this chapter.

In any civil action brought pursuant hereto, in which the city prevails, the court may determine and impose reasonable expenses, including attorney's fees, incurred by the city in the investigation and prosecution of the action.

**SEC. 24.10.3. - Civil action for retaliation.**

A civil action may be instituted against any employer by any employee who has been discharged, demoted, suspended, disciplined or in any other manner discriminated against in terms or conditions of employment, or threatened with any such retaliation, because such employee has, in good faith, made any oral or written report or complaint related to the enforcement of this chapter to any company official, public official or union official, or has testified in any proceeding in any way related thereto. In addition to any actual damages which may be awarded, damages shall include costs and attorney's fees. The court may award punitive damages in a proper case.

**SEC. 24.10.4. - Remedies not exclusive.**

Remedies under this section are in addition to and do not supersede or limit any and all other remedies, civil or criminal.

## **DIVISION XI. - MISCELLANEOUS**

### **SEC. 24.11.0. - Disclaimer of liability.**

The degree of protection required by this chapter is considered reasonable for regulatory purposes. The standards set forth herein are minimal standards and this chapter does not imply that compliance will ensure there will be no unauthorized discharge of hazardous or other regulated material. This chapter shall not create liability on the part of the city, any officer or employee thereof for any damages that result from reliance on this chapter or any administrative decision lawfully made thereunder. All persons handling, storing, using, processing and disposing of hazardous or other regulated materials within the city should be and are advised to determine, to their own satisfaction, the level of protection, in addition to that required by this chapter, necessary or desirable to ensure there is no unauthorized discharge of hazardous or other regulated materials.

### **SEC. 24.11.1. - Guidelines.**

Guidelines implementing this chapter and adopted by the city council shall be maintained in the office of the environmental safety division of the fire department. Such guidelines, in the areas addressed therein, shall serve as an interpretation of this chapter.

### **SEC. 24.11.2. - Conflict with other laws.**

Notwithstanding any other provision of this chapter:

- a. A storage facility regulated by any state or federal agency will be exempted from any conflicting provision of this chapter.
- b. Whenever any provision of this chapter conflicts with the fire code as adopted by the city, the stricter shall prevail.

### **SEC. 24.11.3. - Severability.**

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the chapter. The city council hereby declares that it would have passed this chapter and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of the chapter would be subsequently declared invalid or unconstitutional.

**SEC. 24.12 – 24.99. - Reserved.”**

Section 2. The provisions of this ordinance shall be effective thirty (30) days from and after the date of its adoption.

Section 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Section 4. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

Section 5. This ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Sections 15060(c)(2) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) (the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly).

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