

ARTICLE 8

HAZARDOUS MATERIALS STORAGE

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## ARTICLE 8

### HAZARDOUS MATERIALS STORAGE

#### PART I. GENERAL PROVISIONS

SEC. 3-8.01 PURPOSE. The purpose of this Article is the protection of health, life, resources, and property through prevention and control of unauthorized releases of hazardous materials.

SEC. 3-8.02 GENERAL OBLIGATION - SAFETY AND CARE.

- a. No person, firm, or corporation shall cause, suffer, or permit the storage or handling of hazardous materials:
  - (1) In a manner which violates a provision of this Article or any other local, federal, or state statute, code, rule, or regulation relating to hazardous materials; or
  - (2) In a manner which causes an unauthorized release of hazardous materials or poses a significant risk of such unauthorized release.
- b. City shall have discretion to exempt an applicant from any specific requirement of this Article, other than the requirement for secondary containment in underground storage facilities, except as provided in Section 3-8.10c.(2) or to require applicant to meet additional or modified requirements, where such action would be appropriate and consistent with achieving the general obligation of this Article for protecting public health, safety, and welfare.

SEC. 3-8.03 SPECIFIC OBLIGATION.

- a. Any person, firm, or corporation which stores any material regulated by Section 3-8.06 which is not excluded by Section 3-8.07 shall obtain and keep current a Hazardous Materials Storage Permit.
- b. All such hazardous materials shall be contained in conformity with the standards of Part III of this Article.
- c. The storage and handling of such hazardous materials shall be in conformance with the approved Hazardous Materials Management Plan (HMMP).
- d. The City shall apply for, and the Fire Chief shall consider and issue where appropriate, a permit for the storage of hazardous materials by the City wherever the City's storage facility may be situated. Any other city, county, district, or department, or agency of the state which stores any hazardous substance in an underground storage tank, as those terms are defined in Chapter 6.7, in this City without a permit meeting the requirements of Chapter 6.7 of Division 20 of the Health and Safety Code issued by such other agency, shall obtain and keep current a permit from City which conforms at a minimum to Sections 25284 and 25284.1 of

the Health and Safety Code.

SEC. 3-8.04 DEFINITIONS. Unless otherwise expressly stated, whenever used in this Article, 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 Article.
- b. Carcinogen means a substance listed as a human or animal carcinogen by the International Agency for Research on cancer and included on the List of Hazardous Substances developed by the Director of the State of California Department of Industrial Safety.
- c. CAS number means the unique identification number assigned by the Chemical Abstracts Service to specific chemical substances.
- d. Chemical name means the scientific designation of a substance in accordance with the International Union of Pure and Applied Chemistry or the system developed by the Chemical Abstracts Service.
- e. Common name means any designation or identification such as code name, code number, trade name, or brand name used to identify a substance other than by its chemical name.
- f. Facility means a building or buildings, appurtenant structures, and surrounding land area used by a single business entity at a single location or site.
- g. Handling means the on-site management or use of a material in connection with its storage including all activities that take place within a storage facility and the placing of a material into or taking it out of a storage facility.
- h. Hazard class means explosives A, explosives B, explosives C, blasting agents, flammable liquids, combustible liquids, flammable solids, oxidizers, organic peroxides, corrosive materials, flammable gases, nonflammable gases, poisons A, poisons B, irritating materials, etiologic agents, radioactive materials, other regulated materials (ORM) A, B, C, D, and E. For purposes of this Article, the U. S. Department of Transportation (DOT) definitions in 49 CFR Part 173, as amended, shall be utilized; however, whenever the definitions in 49 CFR 173 refer to transportation of hazards associated with transportation, they shall be deemed to refer to storage or other regulated activity under this Article.
- i. Hazardous material means any material which is subject to regulation pursuant to Part II of this Article. A mixture shall be deemed to be a hazardous material if it either is a waste and contains any material regulated pursuant to Part II of this Article or is a nonwaste and contains one percent (1%) by volume or more of any material regulated pursuant to Part II of this Article.
- j. MSDS means a Material Safety Data Sheet prepared pursuant to Section 6390 of the California Labor Code. For any hazardous substance for which a Material Safety Data Sheet is not required to be prepared pursuant to Section 6390 of the California Labor Code, a Material Safety Data Sheet which contains the information specified in Section 6391 of the California Labor Code shall satisfy the definition of an MSDS

under this Article.

- k. Officer or Fire Chief means the Fire Chief or any designee of the Fire Chief.
- l. Permit means any Hazardous Materials Storage Permit issued pursuant to this Article as well as any additional approvals thereto.
- m. Permit quantity limit means the maximum amount of hazardous material that can be stored 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 Article.
- n. Permittee means any person, firm, or corporation to whom a permit is issued pursuant to this Article, and any authorized representative, agent or designee of such person, firm or corporation. Permittee also means any city, county, district, and State, or any department or agency thereof.
- o. Pipes means pipeline systems which are used in connection with the storage 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.
- p. 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 material being contained.
- q. 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 container shall be made of a material that is not subject to physical or chemical deterioration by the hazardous material being contained.
- r. Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.
- s. Secondary containment means the level of containment external to and separate from the primary containment.
- t. SIC code means the identification number assigned by the Standard Industrial Classification Code to specific types of businesses.
- u. Single-walled means construction with walls made of but one thickness of material. Laminated, coated, or clad materials shall be considered as singlewalled.
- v. Storage facility means any one or combination of tanks, sumps, 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 at a facility.
- w. Sump means a pit or well in which liquids collect.
- x. Unauthorized release means any release of any hazardous material which does not

conform to the provisions of this Article, 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 pre-treatment requirements for publicly owned treatment works.

- y. Wet floor means a floor which is used to routinely collect, contain or maintain standing liquids or to transmit standing liquids on a more or less continuous basis.

SEC. 3-8.05 PROFESSIONAL ASSISTANCE FOR CITY DETERMINATIONS.

Whenever the approval or satisfaction of City may be required in this Article for a design, monitoring, testing, or other technical submittal by an applicant or permittee, the Fire Chief may, in his 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 Fire Chief for the purpose of evaluating and rendering a professional opinion respecting the adequacy of such submittal to achieve the purposes of this Article.

PART II. MATERIALS REGULATED

SEC. 3-8.06 MATERIALS REGULATED. The materials regulated by this Article shall consist of the following:

- a. Any material listed as a hazardous and/or extremely hazardous material or hazardous and/or extremely hazardous waste in Section 66680 and 66685 of Title 22 of the California Administrative Code, as amended, whether such material is stored or handled in waste or nonwaste form; or
- b. Any material which is listed on the list of Environmental Protection Agency (EPA) pollutants, 40 Code of Federal Regulations, Section 401.15, as amended; or
- c. Any material which is classified by the National Fire Protection Association (NFPA) as either a flammable liquid, a Class II combustible liquid or a Class IIIA combustible liquid; or
- d. Any material which is listed by the Director of the Department of Industrial Relations in Title 8, California Administrative Code Section 339, as amended, excluding all footnotes thereto and subject to the exclusions specified in this subsection. Such exclusions shall apply only to materials which are not otherwise regulated pursuant to this section. These exclusions shall be as follows:
  - (1) Materials recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them if such materials are intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; hormones; enzymes; and aflatoxins.
  - (2) Aluminum salts; asphalt fumes; atrazine; benomyl; bis (dimethylthiocarbamoyl) disulfided; boro-oxide; 4-tert-butyl-2-chlorophenyl-

methylmethylphosphoramidate; champhor; carbon black; 2-chloro-6 (trichloromethyl) pyridine; clopidol; coal tar pitch volatiles; cotton dust; dibenzoyl peroxide (benzoyl peroxide); dicyclopentadienyl iron; 3,5-dinitro-o-toluamide; 2,6-di-tert-butyl-p-cresol; ferbam; fumaric acid; glass, fibrous or dust; graphite; helium; iron oxide; iron salts; magnesium oxide; mica; mineral wool fiber; oil mist; phenothiazine; phenyl ether; phenyl ether-diphenyl (eutectic mixture), vapor; phthalic anhydride; m-phthalodinitrile; polytetrafluoroethylene decomposition products; rhodium salts; ronnel; rosin core solder; rotenone, commercial; silica; soapstone, talc; tantalum oxide; terphenyls; 4-4'-thiobis(6-tert-butyl-m-cresol).

- e. Any material which has been determined to be hazardous based upon any appraisal or assessment by or on behalf of the party storing this material in compliance with the requirements of the EPA or the California Department of Health Service, or which should have been, but was not, determined to be hazardous due to the deliberate failure of the party storing the material to comply with the requirements of the EPA or the Department of Health Services; or
- f. Any material which has been determined by the party storing it, through testing or other objective means, to be likely to create a significant potential or actual hazard to public health, safety, or welfare. This subsection shall not establish a requirement to test for the purposes of this Article.
- g. Any material which has been determined by the Fire Chief, through information based on appraisal and assessment from reliable resources, to be likely to create a significant potential or actual hazard to public health, safety, or welfare.

SEC. 3-8.07 EXCLUSIONS. This title does not apply to the following:

- a. Certain Elemental Metals. The following elemental metals included within the purview of Section 3-8.06 shall not be considered hazardous materials for purposes of this Article unless they are stored in a friable, powdered or finely divided state: beryllium, cadmium, chromium, copper, lead, nickel, and silver.
- b. Retail Products. Hazardous materials when contained solely in consumer products packaged for distribution to, and use by, the general public or commercial products used at the facility solely for janitorial or minor maintenance purposes such as paint thinner or wax strippers.
- c. Feed. Hazardous materials when contained in a substance intended for use as animal feed.
- d. Work Station. Hazardous materials located at a work station in a quantity reasonably required for use as determined by City under the circumstances.
- e. Exemption. The City shall exempt any material from the requirements of this Article where it has been demonstrated to the satisfaction of City that the material in the quantity or solution stored does not present a significant actual or potential hazard to the public health, safety, or welfare.

SEC. 3-8.08 MATERIALS STORED IN UNDERGROUND TANKS.

Notwithstanding Section 3-8.07 above, and in addition to those materials regulated pursuant to

Section 3-8.06 above, the provisions of this Article shall apply to any material defined as a hazardous substance in Health and Safety Code Section 25280(c) if the material is stored in an underground storage tank as defined by Section 25280(m) of that Code.

### PART III. CONTAINMENT STANDARDS

SEC. 3-8.09 CONTAINMENT OF HAZARDOUS MATERIALS. No person, firm, or corporation shall store any hazardous materials regulated by this Article until a permit or approval has been issued pursuant to this Article unless permit applicant demonstrates to the satisfaction of City, by the submission of appropriate plans and other information, that the design and construction of the storage facility will result in a suitable manner of storage for the hazardous material or materials to be contained therein. All installation, construction, repair or modification, closure, and removal shall be to the satisfaction of City. City shall have the discretion to exempt an applicant from any specific requirements, except that the discretion with regard to underground storage facilities shall be exercised in accordance with subsections 3-8.10c.(2) and (3) below; or to impose reasonable additional or different requirements in order to better secure the purpose and general obligation of this Article for protection of public health, safety, and welfare. The guidelines approved pursuant to Section 3-8.69 shall serve as an interpretation of the provisions of this Article addressed in such guidelines.

#### SEC. 3-8.10 NEW STORAGE FACILITIES.

- a. No person, firm or corporation shall construct or install any new storage facility until a permit or approval has been issued pursuant to this Article.
- b. Monitoring Capability. All new storage facilities intended for the storage of hazardous materials which are liquids or solids at standard temperature and pressure (STP) shall be designed and constructed with a monitoring system capable of detecting that the hazardous material stored in the primary containment has entered the secondary containment. Visual inspection of the primary containment is the preferred method; however, other means of monitoring may be required by City. Where secondary containment may be subject to the intrusion of water, a means of monitoring for such water shall be provided.

Whenever monitoring devices are provided, they shall, where applicable, be connected to attention-getting visual or audible alarms or both such devices.

- c. Containment requirements. Primary and secondary levels of containment shall be required for all new storage facilities intended for the storage of hazardous materials which are liquids or solids at standard temperature and pressure (STP), unless exempted by City.
  - (1) All primary containment shall be product-tight.
  - (2) Secondary containment:
    - (i) All secondary containment shall be constructed of materials of sufficient thickness, density, and composition so as not to be structurally weakened as a result of contact with the released hazardous materials and so as to be capable of containing hazardous

materials released from a primary container for a period of time equal to or longer than the maximum anticipated time sufficient to allow recovery of the discharged hazardous material.

- (ii) In the case of an installation with one primary container, the secondary containment shall be large enough to contain at least 110% of the volume of the primary container.
  - (iii) In the case of a storage facility with multiple primary containers, the secondary container shall be large enough to contain 150% of the volume of the largest primary container placed in it, or 10% of the aggregate internal volume of all primary containers in the storage facility, whichever is greater.
  - (iv) If the storage facility is open to rainfall, then the secondary containment must be able to additionally accommodate the volume of a twenty-four (24) hour rainfall as determined by a twenty-five (25) year storm history.
- (3) Laminated, coated, or clad materials shall be considered single-walled and shall not be construed to fulfill the requirements of both primary and secondary containment.

d. Variance from requirement for secondary containment.

- (1) A variance from the requirement for secondary containment for an underground storage facility may be granted upon a written finding by the Fire Chief, which has been reviewed and approved by the City Council, that based on the special circumstances:
  - (i) The requirement of secondary containment creates an unusual and particular hardship; and
  - (ii) An equivalent degree of protection is provided by the proposed alternative; and
  - (iii) The proposed alternative has been appropriately certified as providing an equivalent degree of protection, by an independent consultant retained in accordance with Section 3-8.05, or has been specified as potentially appropriate for a variance in the guidelines approved pursuant to Section 3-8.69.
- (2) The City Council shall consider the variance at a public meeting, at which oral or written presentation on the matter may be made. A notice which includes a statement that a variance from secondary containment for hazardous materials will be considered, and which specifies the address of the facility seeking the variance, and the time and place of the meeting shall be given in the following manner:
  - (i) The City Clerk shall cause a copy of the notice to be published once in a newspaper of general circulation in the City, not less than ten (10) days prior to the meeting; and

- (ii) The City Clerk shall cause a copy of the notice to be mailed at least ten (10) days prior to the meeting to any party who files a written request with the City Clerk for mailed notice of meetings at which such variances are to be considered. Such written request for notice shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for such mailed notices shall be filed on or before April 1st of each year.
- e. Variance from construction and Monitoring Requirements. Underground storage tanks may be granted a variance from the standards for construction and monitoring set forth in this subsection, other than from the requirement for secondary containment, only upon a written finding by the Fire Chief that the applicant has demonstrated by clear and convincing evidence:
  - (1) That because of special circumstances not generally applicable to other property or facilities, including size, shape, design, topography, location, or surroundings, the strict application of the standards of this Article would be unnecessary to adequately protect the soil and beneficial uses of the waters of the state from an unauthorized release; or
  - (2) That strict application of the standards of this Article would create practical difficulties not generally applicable to other facilities or property; and that the proposed alternative will adequately protect the soil and beneficial uses of the waters of the state from an unauthorized release.
- f. Overfill Protection. Means of overfill protection may be required for any primary container. This may be an overfill prevention device or an attention-getting high level alarm or both such devices.
- g. Separation of Materials. Materials that in combination may cause a fire or explosion, or the production of a flammable, toxic, or poisonous gas, or the deterioration of a primary or secondary container shall be separated in both the primary and secondary containment so as to avoid intermixing.
- h. Drainage System. Drainage of precipitation from within a storage facility containing hazardous materials which are liquids or solids at STP shall be controlled in a manner approved by the City so as to prevent hazardous materials from being released. No drainage system will be approved unless the flow of the drain can be controlled.
- i. Piping.
  - (1) All piping, valves and fittings shall be designed for working pressures and structural stresses to which they may be subjected. They shall be of steel or other material suitable for use with the product being handled.
  - (2) All piping both aboveground and underground shall be protected against damage to the integrity of the material of which the piping is made in the manner determined necessary and appropriate by the Fire Chief.
  - (3) All piping both aboveground and underground shall have secondary containment as provided in subsection (c) of this section except that the

secondary containment of piping may lead back to the container's secondary containment.

- (4) All aboveground piping shall be properly labeled in accordance with recognized standards which are approved by the Fire Chief.

SEC. 3-8.11 EXISTING STORAGE FACILITIES. Any storage facility in existence as of the effective date of this Article, or any storage facility for which a building permit was issued prior to the effective date of this Article which does not meet the standards of Section 3-8.10 may be permitted pursuant to this Article as long as it is providing suitable storage for hazardous materials. In addition, storage facilities which contain hazardous materials which are liquids or solids at standard temperature and pressure (STP) must be monitored in accordance with a plan approved by City as set forth herein.

- a. A monitoring plan for each such storage facility containing hazardous materials which are liquids or solids at STP, shall be submitted to City as part of the Hazardous Materials Management Plan.
- b. The monitoring plan required by subsection (a) shall include visual inspection of the primary containment unless the Fire Chief determines it is impossible or impractical to provide for such visual monitoring. If the Fire Chief determines that it is impossible or impractical to provide for visual monitoring of the primary containment he may approve alternative devices and methods for monitoring including, but not limited to: pressure testing of piping systems, groundwater monitoring wells which are downgradient and adjacent to the storage facility; vapor analysis within the wells where appropriate; and analysis of the soil borings at the time of initial installation of the wells.
- c. The number and nature of alternative monitoring devices and the nature and frequency of monitoring methods shall be approved by the Fire Chief provided that the frequency of any approved alternative monitoring method shall not be less than twice a year.
- d. All monitoring devices and methods approved by City shall be installed and operating within six (6) months of the issuance of a provisional permit in accordance with Section 3-8.38.
- e. The continued use of, and permit approval for, existing storage facilities is subject to review and modification or termination by City whenever there has been any unauthorized release. It shall also be reviewed by the City each time the permit is renewed. In determining whether continued storage in such storage facility is suitable, City shall consider the age of the storage facility, the methods of containment, the methods of monitoring, the feasibility of the required retrofit, the concentration of the hazardous materials contained, the severity of potential unauthorized release, and the suitability of other long term preventive measures which meet the intent of this Article.
- f. Existing storage facilities which are not approved in accordance with this section must be upgraded to comply with this Article or be closed in accordance with Section 3-8.12 below within one (1) year of a decision not to issue a full term permit. An extension of time for compliance with this subsection, not to exceed one (1) additional year, may be granted by City.

#### SEC. 3-8.12 OUT OF SERVICE 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 Article must be closed or removed in a manner approved by City in accordance with Section 3-8.41.
- 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 reasonable effort to locate such storage facility within six (6) months of the effective date of this Article.
- 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 Section 3-8.41.

#### SEC. 3-8.13 MONITORING.

- a. Monitoring Methods. Monitoring methods shall include at least one system for detecting leakage from the primary container.

A monitoring system capable of detecting that the hazardous material stored in the primary containment has entered the secondary containment shall be provided. Visual inspection of the primary containment is the preferred method; however, other means of monitoring may be required by City. Where secondary containment may be subject to the intrusion of water, a means of monitoring for such water shall be provided.

Whenever monitoring devices are provided, they shall, where applicable, be connected to attention-getting visual or audible alarms or both.

- b. Monitoring, Testing and Inspection. Every permittee under this Article shall provide testing, monitoring (if applicable), and inspections in compliance with the Hazardous Materials Management Plan and shall maintain records adequate to demonstrate compliance therewith.

#### SEC. 3-8.14 MAINTENANCE, REPAIR OR REPLACEMENT.

- a. Permittee shall 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 Section 3-8.41 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 release 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 pursuant to Section 3-8.41 by submitting drawings or other information adequate to describe the repairs to City.
- d. Replacement of any storage facility for hazardous materials which are liquids or solids at STP, must be in accordance with the new installation standards of Section 3-8.10.

SEC. 3-8.15 HANDLING.

- a. Dispensing and mixing of hazardous materials must not be done in such a manner as to substantially increase the risk of an unauthorized release.
- b. When hazardous materials are moved into or out of a storage facility, they shall remain in the travel path only for the time reasonably necessary to transport the hazardous material and such movement shall be in a manner which will not substantially increase the risk of an unauthorized release.

SEC. 3-8.16 SECURED FACILITIES. Access to the storage facilities shall be secured by means of either fences or locks or both security devices. The access to the storage facilities shall be kept securely locked when unattended.

SEC. 3-8.17 EMERGENCY EQUIPMENT. Satisfactory provisions shall be made for containment, neutralization and removal of spills or leakage of hazardous materials, which may occur during storage, handling, transportation or use. This shall include necessary safety equipment for personnel.

An inventory of the above items shall be provided to the fire department. The equipment shall be regularly tested and adequately maintained. Safety equipment used by personnel for fire fighting or chemical spill emergencies shall be compatible with the same equipment used by the Hayward Fire Department.

Equipment installed before the effective date of this ordinance that is not compatible with fire department equipment, but is easily adaptable, shall have adapters available.

SEC. 3-8.18 POSTING OF EMERGENCY PROCEDURES. Simplified emergency procedures shall be posted conspicuously in locations where hazardous materials are stored.

#### PART IV. HAZARDOUS MATERIALS MANAGEMENT PLAN

SEC. 3-8.19 HAZARDOUS MATERIALS MANAGEMENT PLAN. Pursuant to California Health and Safety Code Section 25502, the City assumes the responsibility for the implementation of Chapter 6.95 of Division 20 of the California Health and Safety Code. Each applicant for a permit pursuant to this Article shall file a written plan, for City's approval, to be known as a Hazardous Materials Management Plan (HMMP), which shall demonstrate the safe storage and handling of hazardous materials. The HMMP may be amended at any time with the consent of City. The HMMP shall be a public record except as otherwise specified. Approval of the

HMMP shall mean that the HMMP has provided adequate information for the purposes of evaluating the permit approval. Such approval shall not be understood to mean that the City has made an independent determination of the adequacy of that which is described in the HMMP.

SEC. 3-8.20 STANDARD FORM HMMP. The standard form Hazardous Materials Management Plan must be submitted unless the facility qualifies as a minimal storage site under Section 3-8.21 below. The HMMP shall include the following:

a. Facility Description:

- (1) General Information. The HMMP shall contain the name and address of the facility and business phone number of applicant, the name and titles and emergency phone numbers of the primary response person and an alternate, the number of employees, number of shifts, hours of operation, and principal business activity.
- (2) General Facility Description. The HMMP shall contain a map drawn at a legible scale and in a format and detail determined by City. It shall show the location of all buildings and structures, chemical loading areas, parking lots, internal roads, storm and sewer drains, and shall specify the uses of adjacent properties.

The City may also require information as to the location of wells, flood plains, earthquake faults, surface water bodies, and general land uses (schools, hospitals, institutions, residential areas) within one mile of the facility boundaries.

- (3) Facility Storage Map. The HMMP shall contain a Facility Storage Map at a legible scale for licensing and enforcement purposes. The information in this section is provided for purposes of insuring the suitable and secure storage of hazardous materials and for the protection and safety of emergency response personnel of City. City shall take reasonable precautions to insure the confidentiality of the information provided pursuant to this subsection.

The Facilities Storage Map shall indicate the location of each hazardous materials storage facility, including all interior, exterior, and underground storage facilities, and access to such storage facilities. In addition, the map shall indicate the location of emergency equipment related to each storage facility, and the general purpose of the other areas within each facility.

For each storage facility, the map shall contain information as prescribed below, except that where the hazardous material being stored is claimed to be a trade secret, it shall be identified in a coded manner and not in a manner which would reveal trade secret information:

- (i) A floor plan to scale and the permit quantity limit;
- (ii) For each nonwaste hazardous material which is stored in a quantity greater than the quantities specified in Section 3-8.23a. the chemical name, common name, major constituents for mixtures, United Nations (UN) or North America (NA) number, if available, and physical state. For each waste hazardous material stored in any quantity within the

storage facility, the presence of wastes shall also be indicated;

- (iii) For all hazardous materials, including wastes, stored in each storage facility, the hazard class or classes and the quantity range for each such class, aggregated within each storage facility, in the following ranges:

<u>Quantity Range No.</u>	<u>Range Amounts</u>
1	Up to and including 500 pounds for solids, 55 gallons for liquids, and 200 cubic feet at STP for compressed gases;
2	Between 500 and 5,000 pounds for solids, 55 and 550 gallons for liquids, and 200 and 2,000 cubic feet at STP of compressed gases;
3	Between 5,000 and 25,000 pounds for solids, 550 to 2,750 gallons for liquids, and 2,000 to 10,000 cubic feet at STP for compressed gases;
4	Between 25,000 and 50,000 pounds for solids, 2,750 and 5,500 gallons for liquids, and 10,000 and 20,000 cubic feet at STP for compressed gases;
5	More than 50,000 pounds for solids, 5,500 gallons for liquids, and 20,000 cubic feet at STP for compressed gases;

- (iv) For materials not regulated under this Article but regulated under the Uniform Fire Code, such as radioactives or cryogenics, or for materials stored in storage facilities exempted by Section 3-8.71a. and b. the City may require that the hazard class or classes and the quantity range of each such hazard class, using the quantity ranges listed in subsection (iii) above, be provided;
- (v) For tanks, the capacity limit of each tank, and the hazardous material contained in each tank by chemical name, common name, major constituents for mixtures, United Nations (UN) or North America (NA) number, if available, and physical state.

Due to the threat to the security of the facility 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. 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 law suit to compel disclosure shall be given by City to permittee or permit applicant. However, City shall be under no

duty to prevent disclosures where there has been any unauthorized release of hazardous materials stored in a storage facility shown on such map or where such disclosure arises out of any official emergency response relating to the storage facility.

The Facility Storage Map shall be updated annually or whenever an additional approval is required for the facility or whenever the Hazardous Materials Inventory Statement is required to be amended pursuant to Section 3-8.22.

- b. Hazardous Materials Inventory Statement. A Hazardous Materials Inventory Statement shall be filed in accordance with Part V of this Article.
- c. Separation of Materials. The HMMP shall contain a description of the methods to be utilized to ensure separation and protection of stored hazardous materials from factors which may cause a fire or explosion, or the production of a flammable, toxic, or poisonous gas, or the deterioration of the primary or secondary containment.
- d. Monitoring Program. The HMMP shall contain a description of the location, type, manufacturer specifications (if applicable), and suitability of monitoring methods to be used in each storage facility storing hazardous materials which will be conducted by the permittee.
- e. Record Keeping Forms. The HMMP shall contain an inspection checklist or log designed to be used in conjunction with routine inspections. The checklist or log shall provide for the recording of the date and time of inspection, and for monitoring activity the date and time of any corrective action taken, the name of the inspector, and the countersignature of the designated safety manager for the facility or the responsible official as designated in the HMMP. Checklists and logs are subject to the provisions of Section 3-8.33.
- f. Emergency Equipment. The HMMP shall describe emergency equipment availability, testing, and maintenance.
- g. Variation in Information.
  - (1) Additional information may be required for the HMMP where such information is reasonably necessary to meet the intent of this Article.
  - (2) Requirements for information in the HMMP may be waived where such information is not reasonably necessary to meet the intent of this Article.
  - (3) Whenever the permittee has submitted a plan which includes substantially the same information as is required for any component of the HMMP to any other public agency regulating hazardous materials, such plan may be submitted to City in lieu of such component. The City may give deference to any approval of such plan by the other public agency.
- h. Hazardous Materials Handling. The HMMP shall contain a description of the handling of hazardous materials to demonstrate that such handling shall be conducted in a manner to prevent the accidental release of such material.
- i. Variance from Recording Requirements. The HMMP may include a variance from

the one-ounce standard set forth in Section 3-8.26a.(2) if the Fire Chief determines that the purposes of this Article will be protected by such variance.

SEC. 3-8.21 SHORT FORM HMMP - MINIMAL STORAGE SITE.

- a. A facility shall qualify as a minimal storage site if the quantity of each hazardous material stored in one or more storage facilities in an aggregate quantity for the facility, is 500 pounds or less for solids, 55 gallons or less for liquids, or 200 cubic feet or less at STP for compressed gases.
- b. The applicant for a permit for a facility which qualifies as a minimal storage site may opt to file the short form Hazardous Material Management Plan. Such plan shall include the following components:
  - (1) General application information;
  - (2) A simple line drawing of the facility showing the location of the storage facilities and indicating the hazard class or classes and physical state of the hazardous materials being stored and whether any of the material is a waste;
  - (3) The short form HMMP shall also include a carcinogen identification form which shall indicate the storage of any quantity of any carcinogen;
  - (4) Information describing that the hazardous materials will be stored in a suitable manner and will be appropriately contained, separated and monitored;
  - (5) Description of emergency equipment to be maintained;
  - (6) Assurance that the disposal of any hazardous materials will be in an appropriate manner.
- c. Where a claim for trade secret protection pursuant to Section 3-8.25 is made for any carcinogen pursuant to subsection b.(3) above, the carcinogen identification form to be publicly disclosed shall identify all carcinogens not claimed to be trade secrets and it shall indicate the number of carcinogens claimed to be trade secrets.

PART V. HAZARDOUS MATERIALS INVENTORY

SEC. 3-8.22 HAZARDOUS MATERIALS INVENTORY STATEMENT. A Hazardous Materials Inventory Statement (HMIS) shall be filed annually with the City in accordance with this Article. Any person, firm, or corporation which stores, uses, handles, or disposes of any hazardous material in an amount which is equal to or greater than the quantities specified in Section 3-8.23 is required to file an HMIS. Such person, firm, or corporation shall amend the HMIS within thirty (30) days of the storage of any hazardous material not listed thereon but required to be listed by Section 3-8.23a., or of an increase above the quantity range listed in accordance with Section 3-8.23c., or required to be identified in accordance with Section 3-8.23d.

SEC. 3-8.23 INFORMATION REQUIRED.

- a. Information shall be included in the HMIS for each hazardous material stored in a

facility (aggregated over all such material stored in one or more storage facilities) where the aggregate quantity throughout the facility is greater than 500 pounds in weight for solids, greater than 55 gallons for liquid, or greater than 200 cubic feet at STP for compressed gases.

- b. The information in the HMIS shall include:
  - (1) For nonwastes: The chemical name, common name, major constituents for mixtures, the manufacturer, United Nations (UN) or North America (NA) number, if available, and the hazard class or classes and the Material Safety Data Sheet (MSDS) or equivalent information as required by City.
  - (2) For wastes: The Department of Health Services manifest for wastes or equivalent information, and the hazard class or classes.
- c. In addition, the HMIS shall state the aggregate quantity range stored at the facility of each hazardous material listed in terms of the quantity ranges stated in Section 3-8.20a.
- d. The HMIS shall also include a carcinogen identification form which shall indicate the storage of any quantity of any carcinogen.
- e. Where a claim for trade secret protection is made for any hazardous material pursuant to Section 3-8.25, the HMIS to be publicly disclosed shall indicate the number of materials claimed to be trade secrets and the aggregate quantity range stored at the facility for each such hazardous material stated in terms of the quantity ranges set forth in Section 3-8.20(3)(iii). Where a claim for trade secret protection is made for any carcinogen identified pursuant to subsection (d) above, the carcinogen registration form to be publicly disclosed shall indicate all carcinogens not claimed to be trade secrets and it shall indicate the number of carcinogens claimed to be trade secrets and the aggregate quantity range stored at the facility for each such carcinogen stated in terms of the quantity ranges set forth in Section 3-8.20(3)(iii).

SEC. 3-8.24 PUBLIC RECORDS. The HMIS is a public record except that no trade secret shall be disclosed. Any request for a public record hereunder shall be submitted in writing to the Fire Chief.

SEC. 3-8.25 TRADE SECRETS.

- a. If a permittee or permit applicant believes that a request for information made by either the HMIS or otherwise pursuant to this Article involves the release of a trade secret, the user shall provide the information nonetheless, and shall notify the Fire Department in writing of that information on the form that the user believes involves the release of a trade secret. As used herein, trade secret shall have the meaning given to it by Section 6254.7 of the Government Code and Section 1060 of the Evidence Code.
- b. The trade secret information sought to be protected shall be submitted to the Fire Chief on a separate form or forms, clearly and conspicuously marked or labeled as containing trade secret information, and said form or forms must be submitted only to the Fire Chief or his delegated representative.

- c. Subject to the provisions of this section, the Fire Chief shall protect from disclosure any trade secret when required to do so in writing by the user.
- d. Any information reported to the Fire Chief under this subsection, which is exempt from disclosure pursuant to this section, shall not be disclosed to anyone other than as required by law, except an officer or employee of the City in connection with the official duties of such officer or employee under any law for the protection of health, or to contractors with the City and their employees, if in the opinion of the Fire Chief such disclosure is necessary and required for the satisfactory performance of a contract for performance of work.
- e. Any information reported to the Chief under this subsection, which is exempt from disclosure pursuant to this section, shall not be disclosed to anyone except to a physician where the physician determines that such information is necessary to the medical treatment of his or her patient.
- f. Any person who by virtue of employment, contractual relationship, official position, or physician status has obtained possession of or has had access to information, the disclosure of which is prohibited by this section and who knowing that disclosure of the information is prohibited, intentionally or recklessly discloses the information in any manner to any person not entitled to receive it, or uses the information for his or her own use or advantage, shall be guilty of a misdemeanor.
- g. Information certified by appropriate officials of the United States, as necessarily kept secret for national defense purposes, shall be accorded the full protections against disclosure as specified by such official or in accordance with the laws of the United States.
- h. Upon receipt of a request for the release of information to the public which includes information which the user has notified the Fire Department is a trade secret pursuant to subdivision (a) of this section, the Fire Department shall notify the user in writing of said request by certified mail, return receipt requested. The Fire Department shall release the information thirty (30) days after the day of mailing and notice, unless, prior to the expiration of said thirty (30) days, the user institutes an action in an appropriate court for a declaratory judgment that said information is subject to protection under subdivision (c) of this section or an injunction prohibiting disclosure of said information to the general public.
- i. The provisions of this section shall not permit a user to refuse to disclose the information required pursuant to this Article to the Fire Chief.

## PART VI. RESPONSIBILITY

SEC. 3-8.26 REPORTING UNAUTHORIZED RELEASE. 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 release of a hazardous material which is liquid or solid at STP, such person shall take all necessary steps to ensure the discovery and containment and clean up of such release and shall notify City of the occurrence as required by this section.

- a. Confirmed Unauthorized Release.

- (1) Recordable Unauthorized Release. Any recordable unauthorized release shall be contained and safely disposed of in an appropriate manner by permittee and such occurrence and the response thereto shall be recorded in the permittee's monitoring records. A recordable unauthorized release is any unauthorized release of a hazardous material which meets all of the following criteria:
  - (i) The release is from a primary containment to a secondary containment or to a rigid above ground surface covering capable of containing the release until clean up of the hazardous material is completed; and
  - (ii) The permittee is able to adequately clean up the release before it escapes from such secondary containment or such aboveground surface, but if the clean up requires more than eight (8) hours, it becomes a reportable release in accordance with subsection (2) below.
  - (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.
- (2) Nonrecordable Unauthorized Release. An otherwise recordable unauthorized release does not need to be recorded if (1) the release is not the result of the deterioration or failure of the primary container, and (2) the quantity released is less than one ounce by weight or such other quantity as has been specified in the HMMP in accordance with the provisions of Section 3-8.20i., and (3) the release can be cleaned up within fifteen (15) minutes.
- (3) Reportable Unauthorized Release. Any unauthorized release which is not recordable under paragraph (1) above and does not meet the criteria set forth in paragraph (2) above, must be reported to City immediately. The reporting party shall provide information to City relating to the ability of permittee to contain and dispose of the hazardous material, the estimated time it will take to complete containment and disposal, and the degree of hazard created. City may verify that the hazardous material is being contained and appropriately disposed. City, at any time upon a determination that permittee is not adequately containing and disposing of such hazardous material, shall have the power and authority to undertake and direct an emergency response in order to protect the public health or safety.
- (4) Office of Emergency Services. The City shall submit a written report to the Office of Emergency Services within ten (10) working days from the date that the City is notified of an unauthorized release from an underground storage tank.

b. Unconfirmed Unauthorized Release.

- (1) Indication of Loss in Inventory Records. Whenever a material balance or other inventory record, employed as a monitoring technique under the HMMP, indicates a loss of hazardous material, and no unauthorized release has been confirmed by other means, permittee shall have five (5) working days to determine whether or not there has been an unauthorized release. If

before the end of such period, it is determined that there has been no unauthorized release, an entry explaining the occurrence shall be made in permittee's monitoring records. Where permittee has not been able, within such period, to determine that there has been no unauthorized release, an unauthorized release is deemed confirmed and permittee shall proceed in accordance with subsection a.(2), above.

- (2) Test Results. Whenever any test results suggest a possible unauthorized release, and no unauthorized release has been confirmed by other means, the permittee shall have five (5) working days to retest. If second test results obtained within that period establish that there has been no unauthorized release, the results of both tests shall be recorded in permittee's monitoring records. If it has not been established within such period that there has been no unauthorized release, an unauthorized release is deemed confirmed and permittee shall proceed in accordance with subsection a.(2), above.
- (3) Gases at STP. Any person in charge of a storage facility or responsible for emergency response for a storage facility, who has knowledge of any unauthorized release of a hazardous material which is a gas at STP, must immediately report such release to the City if such release presents a threat of imminent danger to public health and safety.

SEC. 3-8.27 CLEAN UP RESPONSIBILITY. Any person, firm, or corporation responsible for storing the hazardous material shall institute and complete all actions necessary to remedy the effects of any unauthorized release, whether sudden or gradual. City shall undertake actions to remedy the effects of such unauthorized release itself, only if it determines that it is reasonably necessary under the circumstances for the City to do so. The responsible party shall be liable to reimburse City for all costs incurred by City in remedying the effects of such unauthorized release, 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 the hazardous material in causing or allowing such release. Any responsible party who undertakes action to remedy the effects of an unauthorized release shall not be barred by this title from seeking to recover appropriate costs and expenditures from other responsible parties except as provided by Section 3-8.28.

SEC. 3-8.28 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, which occurs by reason of an unauthorized release in connection with the permittee's operations under this permit except as arises from City's sole willful act or sole active negligence.

## PART VII. INSPECTIONS AND RECORDS

SEC. 3-8.29 INSPECTIONS BY CITY. City may conduct inspections, at its discretion, for the purpose of ascertaining compliance with this Article and causing to be corrected any conditions which would constitute any violation of this Article or of any other statute, code, rule, or regulation affecting the storage of hazardous materials.

Permittees are not required to disclose the identity of hazardous materials protected as trade secrets pursuant to Section 3-8.25 to anyone other than the official designated for that purpose pursuant to Section 3-8.25 except in the case of an emergency response or an unauthorized release

related to the storage facility in which the trade secret material is contained. Therefore, the permittee may put temporary coverings over the labels of trade secret materials during the course of City inspections conducted by other than the City official so designated.

- a. Right of Entry. Whenever necessary for the purpose of investigating or enforcing the provisions of this Article 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 Article, 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 City and nothing in this Article shall be construed as requiring City to conduct any such inspection nor shall any actual inspection made imply a duty to conduct any other inspection. Furthermore, nothing in this Article shall be construed to hold City or any officer, employee, or representative of 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. 3-8.30 INSPECTIONS BY PERMITTEE. The permittee shall conduct regular inspections of its own facilities to assure compliance with this Article and shall maintain logs or file reports in accordance with its Hazardous Materials Management Plan. The inspector conducting such inspections shall be qualified to conduct such inspections.

SEC. 3-8.31 SPECIAL INSPECTIONS. In addition to the inspections specified above, City may require the periodic employment of special inspectors to conduct an audit or assessment of permittee's facility to make a hazardous material safety evaluation and to determine compliance with the provisions of this Article.

- a. The special inspector shall be a qualified person or firm who shall demonstrate expertise to the satisfaction of City.
- b. The special inspection report shall include an evaluation of the facilities and recommendations consistent with the provisions of this Article where appropriate. A copy of the report shall be filed with City at the same time that it is submitted to permittee.
- c. Permittee shall, within thirty (30) days of said report, file with City a plan to implement all recommendations, or shall demonstrate to the satisfaction of City why such recommendations shall not be implemented.

SEC. 3-8.32 SUBSTITUTED INSPECTIONS. An inspection by an employee of any other public agency may be deemed by City as a substitute for any requirement above.

SEC. 3-8.33 MAINTENANCE OF RECORDS. All records required by this Article shall be maintained by the permittee for a period of not less than three (3) years. Said records shall

be made available to City during normal working hours and upon reasonable notice.

## PART VIII. APPLICATION FOR PERMIT

SEC. 3-8.34 PERMIT. Any person, firm, or corporation which stores any hazardous material shall obtain and keep current a Hazardous Materials Storage Permit issued pursuant to this Article. A Hazardous Materials Storage Permit may be a full term or temporary permit or a provisional permit. One permit shall be issued for each storage facility. Additional approvals shall be obtained for any storage facility thereafter connected, installed, constructed, repaired as required by Section 3-8.14, substantially modified, replaced, closed, or removed, or for any change or addition in hazardous materials stored, not in accordance with the prior approval. Notwithstanding the above, permittee shall have thirty (30) days to apply for an additional approval for the storing of a new or different hazardous material with the same hazard class as stated on the existing permit approvals where such storage does not increase the hazard of fire or explosion or the hazard of the production of flammable or poisonous gas. Storage of new or different hazardous materials, not meeting all of these criteria, shall require the prior additional approval.

SEC. 3-8.35 APPLICATION FOR PERMIT. Application for a new, amended, or renewed permit or an additional approval shall be made to the Fire Chief on the form provided by City. In addition to the information required by such form, applicant shall submit the Hazardous Materials Management Plan required by Section 3-8.19 and construction plans, if any, in conformity with Section 3-8.09. Applicant shall specify the permit quantity limit requested to be permitted approved for each storage facility.

SEC. 3-8.36 INVESTIGATION. 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 Article.

SEC. 3-8.37 APPROVAL OF PERMIT. Neither a full term nor a temporary permit shall not be approved until the issuing officer is satisfied that the storage approved adequately conforms to the provisions of this Article.

SEC. 3-8.38 PROVISIONAL PERMIT. If the officer to whom application has been made finds that the proposal does not completely conform to the provisions of this Article the officer may approve a provisional permit, subject to conditions to be imposed by the officer, when such a provisional permit is feasible and does not appear to be detrimental to the public interest. The applicant must be informed in writing of the reasons why a full term permit was not issued.

SEC. 3-8.39 TEMPORARY PERMIT. A temporary permit for storage may be issued where storage does not exceed six (6) months. The Containment Standards of Part III, the Hazardous Materials Management Plan of Part IV, and the Inspection and Records Requirements of Part VII may be modified as appropriate under these circumstances for the storage of hazardous materials on a nonregular, temporary basis.

### SEC. 3-8.40 ISSUANCE OF PERMITS.

- a. Issuance. Upon the approval of a temporary, provisional, or full term permit by the officer and upon the payment of any applicable fee, the officer shall issue the permit to the applicant. Such permit shall contain the following information:

- (1) The name and address of the permittee for purposes of notice and service of process;
  - (2) The address of the facility for which the permit is issued;
  - (3) Authorization of the storage facility approved under the permit, the permit quantity limit, and the approved hazard class or classes for the storage facility;
  - (4) The date the permit is effective;
  - (5) The date of expiration;
  - (6) When applicable, a designation that the permit is provisional or temporary;
  - (7) Any special conditions of the permit.
- b. Records. The fire department shall keep a record of all permits issued and all conditions attached thereto.

#### SEC. 3-8.41 ADDITIONAL APPROVALS.

- a. When a request for an additional approval is filed as required by Section 3-8.34 the procedures set forth in this Article for an application for a permit shall also apply to an application for an additional approval. Each application for an additional approval shall be accompanied by an appropriate amendment to the HMMP.
- b. If the additional approval request is for closure of a storage facility, permittee shall apply for approval to close such storage facility not less than thirty (30) days prior to the termination of the storage of hazardous materials at the storage facility. Such closure shall be in accordance with a closure plan which describes procedures for terminating the storage of hazardous materials in each storage facility in a manner that:
  - (1) Minimizes the need for further maintenance; and
  - (2) Controls to the extent that a threat to public health or safety or to the environment from residual hazardous materials in the storage facility is minimized or eliminated; and
  - (3) Demonstrates that hazardous materials that were stored in the storage facility will be removed, disposed of, neutralized, or reused in an appropriate manner.

This thirty (30) day period may be waived by City if there are special circumstances requiring such waiver.

SEC. 3-8.42 TERM. A permit may be issued for a term of one (1) year, excepting provisional permits which may be issued for any period of time up to six (6) months and temporary permits which may be issued for no longer than six (6) months.

SEC. 3-8.43 RENEWAL. Every application for the renewal of a full term 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 City has made its

determination pursuant to Section 3-8.44 and any administrative appeal pursuant to Part IX has been exhausted.

SEC. 3-8.44 DETERMINATION. City shall make a determination with regard to any application for a permit, an additional approval, or a renewal, within ninety (90) days from the date that the application has been completed or compliance with the appropriate provisions of the California Environmental Quality Act (CEQA), has been completed, whichever occurs later. This time limit may be further extended by mutual agreement between City and applicant.

SEC. 3-8.45 FEES. The City Council shall establish fees by Resolution from time to time in amounts sufficient to recover the costs in processing applications for permits and administering this Article.

- a. Applicant Fees. No application shall be accepted unless and until the required application fee has been paid.

No refund or rebate of an application fee shall be allowed by reason of the fact that the permit is denied or the permittee discontinues the activity or use of a facility prior to the expiration of the term or that the permit is suspended or revoked prior to the expiration of the term.

- b. Administration fees. No approved permit shall be issued until the required administration fee has been paid.

SEC. 3-8.46 TRANSFER OF PERMIT. The permit may be transferred to new owners of the same business only if the new owners accept responsibility for all obligations under this Article at the time of the transfer of the business and document such transfer on a form provided by City within thirty (30) days of transfer of ownership of the business. Such transfer shall be subject to the approval of City.

SEC. 3-8.47 EFFECTIVE DATE OF PERMIT. No permit shall become effective until the permit has been signed and accepted by the permittee. Where the permittee is a company, firm, or corporation, the acceptance must be signed by a person having the legal authority to bind the permittee.

## PART IX. DENIAL

SEC. 3-8.48 DENIAL OF APPLICATION. If the officer to whom application has been made has cause to deny the application and determines that it would not be feasible or in the public interest to approve a temporary or provisional permit, then the officer shall deny the application.

SEC. 3-8.49 GROUND FOR DENIAL. A permit shall be denied if the applicant fails to demonstrate adequate conformity to the provisions of the Article. In addition, a permit can be denied for any of the grounds upon which the permit would be subject to revocation pursuant to Part X.

SEC. 3-8.50 TRANSMITTAL OF DECISION. The decision to deny the application shall be given to the applicant in writing, setting forth the findings upon which the decision is based.

SEC. 3-8.51 APPEAL TO CITY MANAGER. Within thirty (30) days from the date of deposit of the decision in the mail in accordance with Section 3-8.49, the applicant may appeal, in writing, to the City Manager, setting forth with particularity the ground or grounds for the appeal.

SEC. 3-8.52 HEARING ON APPEAL. The City Manager shall set a time and place for the hearing on the appeal and shall notify the applicant, in writing, of such date and time, not later than ten (10) working days from the date the appeal was received by the City Manager. The hearing shall be conducted within thirty (30) days from the date the appeal was received by the City Manager.

SEC. 3-8.53 DISPOSITION OF APPEAL. After the hearing on the appeal, the City Manager may refer the matter back to the Fire Chief for a new investigation and decision, may affirm the original decision, may approve a provisional permit as provided in Section 3-8.38, or may approve the application with or without conditions. The decision of the City Manager shall be the final administrative determination and is subject to judicial review.

## PART X. REMEDIAL ACTION

SEC. 3-8.54 GROUNDS FOR REMEDIAL ACTION. A permit may be subjected to remedial action for any of the following causes, arising from the acts or omissions of the permittee, either before or after a permit is issued:

- a. Fraud, willful misrepresentation, or any willful inaccurate or false statement in applying for a new or renewed permit;
- b. Fraud, willful misrepresentation, or any willful inaccurate or false statement in any report required by this Article;
- c. Failure to abate, correct, or rectify any noncompliance within the time specified in the notice of noncompliance;
- d. Failure to correct conditions constituting an unreasonable risk of an unauthorized release of hazardous materials within a reasonable time after notice from a governmental entity;
- e. Failure to abide by the remedial action imposed by City.

SEC. 3-8.55 NOTICE OF NONCOMPLIANCE. Unless the City Manager finds that an immediate suspension under Section 3-8.57 is necessary to protect the public health or safety from imminent danger, the Fire Chief shall issue a notice of noncompliance:

- a. For failure to comply with the provisions of this Article, any permit conditions, or any provisions of the Hazardous Materials Storage Plan; or
- b. Before instituting remedial action pursuant to Section 3-8.54d. such notice shall be sent certified mail to permittee. If the noncompliance is not abated, corrected, or rectified within the time specified, remedial action may be taken.

SEC. 3-8.56 NOTICE OF HEARING. A notice of hearing shall be given to the permittee by the Fire Chief, in writing, setting forth the time and place of the hearing, the ground or

grounds upon which the remedial action 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) days prior to the hearing date.

SEC. 3-8.57 SUSPENSION PRIOR TO HEARING. Whenever the Fire Chief finds that suspension of a permit prior to a hearing for remedial action is necessary to protect the public health or safety from imminent danger, the Fire Chief may immediately suspend any permit pending the hearing for remedial action. The Fire Chief shall immediately notify the permittee of such suspension by having a written notice of the suspension personally served on the permittee. 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. 3-8.58 REMEDIAL ACTION. If the Fire Chief, after the hearing, finds that cause exists for remedial action, the Fire Chief shall impose one or more of the following:

- a. A warning;
- b. An order to correct the particular noncompliance specified in the notice issued pursuant to Section 3-8.55;
- c. A revocation of the permit for the facility or for a storage facility and approval of a provisional permit;
- d. Suspension of the permit for the facility or for a storage facility for a specified period not to exceed six (6) months;
- e. Modification or addition of conditions of the permit;
- f. Revocation of the permit with no reapplication permitted for a specified period not to exceed five (5) years.

If the grounds for remedial action are based on Section 3-8.54 c., d., or e. and if such grounds are limited to one storage facility, the remedial action taken shall be limited to that storage facility.

SEC. 3-8.59 TRANSMITTAL OF DECISION. Within ten (10) days of the hearing the Fire Chief shall render a written opinion, stating the findings upon which the decision is based and the action taken, if any. The decision of the Fire Chief shall be the final administrative determination and is subject to judicial review.

SEC. 3-8.60 AUTHORITY AFTER SUSPENSION, REVOCATION OR EXPIRATION. The suspension, revocation, or expiration of a permit issued under this Article shall not prevent any proceedings to investigate such permit, any remedial action against such permittee, or any proceeding against such permittee.

SEC. 3-8.61 RETURN OF PERMIT. In the event that a permit issued under the provisions of this Article 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.

SEC. 3-8.62 HEARING RULES. In any hearing under this Article all parties involved shall have the right to offer testimonial, documentary, and tangible evidence bearing on the issues, to be represented by counsel, and to confront and cross-examine any witnesses against them. Any hearing under this Article may be continued by the person conducting the hearing for a reasonable time for the convenience of a party or a witness.

SEC. 3-8.63 HEARING NOTICES. All notices required by this Article shall be sent by certified mail, return receipt requested, to the applicant or permittee at the address given for purposes of notice on the application or permit or delivered to the permittee personally.

## PART XII. ENFORCEMENT

SEC. 3-8.64 CRIMINAL PENALTIES AND ENFORCEMENT OFFICER. A violation of any provision of this Article or a failure to comply with the terms and conditions of any permit issued hereunder shall be punishable as provided in Chapter 1, Article 3, Section 1-3.00 of this Code. Each day that a violation or failure to comply continues shall be deemed a separate offense and punishable as such. The Fire Chief and his designees shall have and are hereby vested with the authority to enforce the provisions of this Article in the manner provided by California Penal Code Section 836.5.

SEC. 3-8.65 CIVIL PENALTIES. Any person, firm, or corporation who intentionally or negligently violates any provision of this Article, except that an unauthorized release which is recordable and recorded in compliance with Section 3-8.26 shall not be a violation of this Article for purposes of this section, or fails to comply with any order issued thereunder, shall be liable for a civil penalty not to exceed Five Hundred Dollars (\$500.00) 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 District Attorney. In determining the penalty, the court shall 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.

In any civil action brought pursuant hereto, in which City prevails, the court shall determine and impose reasonable expenses, including attorneys' fees, incurred by City in the investigation and prosecution of the action.

SEC. 3-8.66 REMEDIES NOT EXCLUSIVE. Remedies under this Article are in addition to and do not supersede or limit any and all other remedies, civil or criminal.

SEC. 3-8.67 CIVIL ACTION FOR RETALIATION. A civil action may be instituted against any employer by an employee who has been discharged, demoted, suspended, 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 Article 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 attorneys' fees. The court may award punitive damages in a proper case.

## PART XIII. MISCELLANEOUS

### SEC. 3-8.68 DISCLAIMER OF LIABILITY.

- a. The degree of protection required by this Article is considered reasonable for regulatory purposes. The standards set forth herein are minimal standards and this Article does not imply that compliance will ensure that there will be no unauthorized release of hazardous material. This Article will not create liability on the part of City, or any officer or employee thereof, for any damages that result from reliance on this Article or any administrative decision lawfully made thereunder. All persons handling, storing, using, processing, and disposing of hazardous materials within City should be and are advised to determine to their own satisfaction the level of protection in addition to that required by this Article necessary or desirable to ensure that there is no unauthorized release of hazardous materials.
- b. This Article is not intended to create any different standard of obligation for the storage of carcinogens than is imposed for the storage of other hazardous materials. Hazardous materials are identified as carcinogens herein for public record purposes only and the identification of a material as a carcinogen shall not require a different or stricter application of the provisions of this Article, nor notice to any person under any circumstances other than those expressly specified in this Article, nor shall such identification create any other duty or obligation upon City different from or additional to those duties or obligations applicable to the storage of other hazardous materials.

SEC. 3-8.69 GUIDELINES. Guidelines approved by the Fire Chief shall be maintained in the office of the City Clerk. Such guidelines, in the areas addressed therein, shall serve as an advisory interpretation of this Article.

SEC. 3-8.70 DUTIES ARE DISCRETIONARY. Subject to the limitations of due process, notwithstanding any other provision of this Article whenever the words shall or must are used in establishing a responsibility or duty of City, its elected or appointed officers, employees, or agents, it is the legislative intent that such words establish a discretionary responsibility or duty requiring the exercise of judgment and discretion.

SEC. 3-8.71 CONFLICT WITH OTHER LAWS. Notwithstanding any other provision of this Article:

- a. A storage facility regulated by any state or federal agency will be exempted from any conflicting provision of this Article.
- b. If the storage facility is required to have a permit from the Department of Health Services under Health and Safety Code Section 25100 et seq., it shall be exempted

from any provision of this Article which is covered by the regulations adopted under the above-cited statute.

- c. Whenever any provision of this Article conflicts with the Fire Code of the City of Hayward, the stricter shall prevail.

SEC. 3-8.72 REPORT TO THE STATE WATER RESOURCES CONTROL BOARD. The City will require its permit applicants and permittees to fill out, in addition to forms required for City's own purposes under this Article, standardized forms based on the application form and annual report form prepared by the State Water Resources Control Board as specified by California Health and Safety Code Section 25283.2, and City will forward these forms to the State Water Resources Control Board.

However, where any of the information required on such standardized forms is claimed by the permit applicant or permittee to be a trade secret, the permit applicant or permittee shall leave that portion of the form submitted to City blank, except to indicate the words trade secret, and the permit applicant or permittee shall thereafter, within ten (10) days of submitting the incomplete form to City, submit the completed form including the trade secret information directly to the State Water Resources Control Board. City shall have no obligation to protect as a trade secret any information which is furnished to it for forwarding to the State Water Resources Control Board on these standardized forms.

#### PART XIV. COMPLIANCE SCHEDULE

SEC. 3-8.73 TIME TABLE FOR INITIAL COMPLIANCE. Compliance with the provisions of this Article shall be required as of January 1, 1985, provided that to the extent that the provisions of Section 3-8.09 through 3-8.13 and 3-8.34 through 3-8.47 are applicable to underground storage facilities installed after January 1, 1984, compliance with such section shall be required as of January 1, 1984.