

## **ORDINANCE NO. .**

### **BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA**

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#### **ORDINANCE AMENDING CHAPTER 4.92 OF TITLE 4 - SANITATION AND HEALTH OF THE SAN MATEO COUNTY ORDINANCE CODE CONSISTING OF SECTION 4.92.010 TO SECTION 4.92.190 AND RETITLING THE SUBSEQUENT ORDINANCE AS HAZARDOUS MATERIALS STORAGE ORDINANCE**

**Sections 4.92.010 through 4.92.330 of Chapter 4.92 of Title 4 of the San  
Mateo County Ordinance Code are hereby repealed and replaced in their entirety  
with new Sections 4.92.010 through 4.92.190, to be entitled and read as follows:**

#### **4.92.010 - Purpose.**

The purpose of this Chapter is to protect health, life, the environment, and property through the prevention and control of the unauthorized discharge of Hazardous Substances. This Chapter is a supplement to, not a replacement for, applicable state and federal laws and regulations.

#### **4.92.020 – 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, shall mean out of service and not safeguarded in compliance with conditions set forth in the CUPA Permit for that Storage Facility.
- (b) CUPA Permit shall mean a permit issued by Environmental Health Certified Unified Program Agency as required by Section 25404.2 of California Health and Safety Code, to a business for the Storage of Hazardous Substances, generation of Hazardous Waste, operation of Underground Storage Tanks, storage of petroleum in aboveground tanks, and/or treatment of Hazardous

Waste. A CUPA Permit is valid for the term stated on the permit, unless suspended as described Section 4.92.060 of this Chapter. CUPA Permits are issued to a specific owner for a specific location, and may be obtained by submitting an application and appropriate fee to Environmental Health.

(c) Director shall mean the head of Environmental Health, or his or her designee.

(d) Environmental Health shall mean the Environmental Health Services Division of the San Mateo County Health System.

(e) Facility shall mean all contiguous land and structures, other appurtenances, and improvements on the land, which are used for any activity regulated pursuant to this Chapter.

(f) Hazardous Substance shall mean any material or substance which is regulated pursuant to Section 4.92.030 of this Chapter. A mixture shall be considered a Hazardous Substance if it contains one percent by volume or more of any substance regulated pursuant to Section 4.92.030 of this Chapter.

(g) Hazardous Waste shall have the same meaning as set forth in Section 25117 of California Health and Safety Code.

(h) Health Officer or Officer shall mean the County Health Officer or his or her designee.

(i) Notice of Fine shall mean a notice and/or order, however denominated, issued by Environmental Health to an owner and/or operator of a Facility requiring said owner and/or operator to pay penalty(ies) for any violation(s) of this Chapter.

- (j) Storage or Store shall mean the containment, handling or treatment of (or to contain, handle or treat) Hazardous Substances, either on a temporary basis or for a longer term, like a period of years.
- (k) Underground Storage Tank or UST shall have the same meaning as set forth in Section 25281 of California Health and Safety Code, unless otherwise specified in this Chapter.
- (l) UST Permit shall mean a permit issued by Environmental Health Certified Unified Program Agency for the installation, removal, closure or modification of a UST.

#### **4.92.030 – Hazardous Substances Regulated.**

“Hazardous Substances” include the following liquid, solid, and gas substances:

- (1) Petroleum and petroleum derivatives;
- (2) “Hazardous substances” as defined by Section 25281 of California Health and Safety Code;
- (3) “Hazardous material” as defined by Section 25501 of California Health and Safety Code; and
- (4) Any material which has been determined through testing or other objective means, to be likely to create a significant potential or actual hazard to public health, safety or welfare.

#### **4.92.040 – General Obligation – Safety and Care.**

(a) No person, agency or entity shall cause, suffer or permit the Storage of Hazardous Substances:

- 1. In a manner which violates any provision of this Chapter or any other applicable federal or state laws or regulations; or

2. In a manner which causes or creates a significant risk of causing an unauthorized discharge of Hazardous Substances.

(b) All such Hazardous Substances shall be contained in compliance with the terms and conditions set forth in the CUPA Permit.

**4.92.50 – Requirements for CUPA Permits.**

(a) Any person, agency or entity must apply for and be issued a CUPA Permit from Environmental Health prior to commencing any of the following activities:

1. Storage of Hazardous Substances above threshold quantities established in Section 25507 of California Health and Safety Code.
2. Generation, treatment, Storage, disposal, transport or offer for transport of any Hazardous Waste, excluding waste generated incidental to owning and/or maintaining one's own place of residence;
3. Ownership or operation of a UST containing any Hazardous Substance, until the UST has been permanently closed pursuant to Section 4.92.080 of this Chapter and in accordance with Title 23 of the California Code of Regulations;
4. Storage of petroleum products in aboveground tanks regulated under Chapter 6.67 of Division 20 of California Health and Safety Code; or
5. Operation of a process regulated by Chapter 6.95 of Division 20 of California Health and Safety Code.

(b) Any person, agency or entity assuming ownership or operation of an existing Facility must submit an application for a CUPA Permit within 30 days of assuming ownership or operation of said Facility.

- (c) Failure by any person, agency or entity to secure a CUPA Permit for a Facility prior to commencing any activity regulated pursuant to this Chapter may result in the closure of the Facility and the imposition of a penalty on that person, agency or entity in an amount not to exceed three times the cost of the CUPA Permit for said Facility.
- (d) No Facility may be abandoned, permanently closed, or temporarily closed without providing Environmental Health with 10 business days' advance written notice.
- (e) No CUPA Permit shall be issued pursuant to this Chapter unless the applicant demonstrates to the satisfaction of Environmental Health that the design and construction of the Storage area will provide a suitable manner of Storage for the Hazardous Substance(s) to be contained therein.

**4.92.060 – CUPA Permit Suspension & Denial; Appeal Process.**

- (a) A CUPA Permit may be suspended under the following circumstances:
  - 1. The permit holder fails to pay the annual fee for the CUPA Permit or any fines or penalties that have been assessed within 60 days of their respective due date(s).
  - 2. The permit holder repeatedly fails to operate in compliance with permit conditions, applicable state laws and regulations, or the provisions of this Chapter
  - 3. The Health Officer determines, based upon inspection findings or other evidence, that the permitted activity is imminently hazardous to public health or safety, or the environment.

4. Failure to make a Facility available and accessible for inspection

(b) The Health Officer will serve on the permit holder by certified mail, within 48 hours of the suspension or denial of the CUPA Permit, written notice of the grounds for said suspension or denial. The permit holder may appeal the suspension or denial of the CUPA Permit by submitting a written request to the Health Officer within 10 calendar days of receipt of the permit suspension or denial.

1. If an appeal is requested, a hearing will be conducted by the Health Officer within 30 days of the date the request was received. The decision will be final.
2. No person, agency or entity shall perform any activities regulated pursuant to this Chapter without a valid CUPA Permit, including during the appeal process.
3. A CUPA Permit may be reinstated upon payment of all permit fees and penalties, and by demonstrating to the satisfaction of the Health Officer that the condition which caused the suspension no longer exists.

#### **4.921.070 – Unauthorized Releases – Cleanup Responsibility.**

Any person, agency or entity responsible for Storing Hazardous Substances shall take all steps necessary to remedy the effects of any unauthorized discharge or threatened unauthorized discharge of Hazardous Substances, regardless of reason or cause. If the responsible party fails to act promptly, the County may seek reimbursement for any actions it undertakes to minimize the effects of said unauthorized discharge or threatened unauthorized discharge of Hazardous

Substances.

**4.92.080 – Underground Storage Tank Permits.**

(a) Modification or installation of USTs

1. No person, agency or entity shall modify or install any UST system component regulated by Title 23 of the California Code of Regulations or Chapters 6.5 and 6.7 of Division 20 of California Health and Safety Code without being issued a UST Permit from Environmental Health, and paying the appropriate fee set forth in Chapter 5.64 of San Mateo County Ordinance.
2. Any such modification or installation shall be conducted in compliance with the terms and conditions of the UST Permit.

(b) UST Closure

1. No person, agency or entity shall abandon a UST or close or temporarily cease operating a UST, except as provided in Title 23 of the California Code of Regulations and Chapters 6.5 and 6.7 of Division 20 of California Health and Safety Code. The requirements of this Section shall apply to USTs as defined in Section 4.92.020 of this Chapter, as well as all home heating oil and agricultural tanks.
2. Any person, agency or entity seeking to close or temporarily cease operating any UST system component regulated by Title 23 of the California Code of Regulations or Chapters 6.5 and 6.7 of Division 20 of California Health and Safety Code shall submit a permit application at least 30 days in advance and shall not proceed with said closure or temporary cessation

without being issued a UST Permit from Environmental Health, and paying the appropriate fee set forth in Chapter 5.64 of San Mateo County Ordinance. Said closure or temporary cessation shall comply with the terms and conditions of the UST Permit.

**4.92.090 – Fee for CUPA and UST Permits.**

- (a) A fee shall be paid annually to the County by each person, agency or entity who is required to possess a CUPA Permit.
- (b) A fee shall be paid by the applicant when a UST Permit application is submitted.
- (c) The Board of Supervisors shall adopt a fee schedule at a level sufficient to cover the necessary and reasonable costs incurred in administering this Chapter, including, but not limited to, permitting and inspection responsibilities.
- (d) CUPA Permit fees and UST Permit fees shall include any surcharges set by the Legislature to cover the costs of the State Water Control Board, California Emergency Management Agency and any other State Agencies to carry carrying out its responsibilities under State law and regulations.
- (e) CUPA Permit fees and UST Permit fees shall be assessed and collected as provided in Chapter 5.64 of San Mateo County Ordinance.

**4.92.100 – Inspection and Records – Authority.**

In order to carry out the purposes of this Chapter, the Health Officer is authorized pursuant to Sections 25185 and 25511 of California Health and Safety Code to inspect, unannounced during normal business hours, any Facility Storing, or



reasonably suspected of Storing Hazardous Substances, or any site where USTs are located, or any adjacent real property owned and/or operated by the subject Facility.

**4.92.110 – After Hours Inspections.**

The owner of a permitted Facility, or the permit holder, if different, shall pay an hourly fee, established by resolution of the Board of Supervisors, for any inspection occurring outside of business days during normal business hours, which are Monday-Friday, 7 a.m. to 6 p.m..

**4.92.120 – Concealment.**

Causing, permitting, aiding, abetting or concealing a violation of any provision of this Chapter shall constitute a violation of such provision.

**4.92.140 – Civil Penalties.**

Any person, agency or entity that violates any provision of this Chapter shall be liable for the civil penalties set forth in this Chapter as well as any additional penalties available under applicable state law.

(a) The owner or operator of any Facility is vicariously responsible for any violation by an employee of any provision of this Chapter.

(b) Civil Actions. Any violation of this Chapter may be enforced by civil action brought by the County. In any such action, the County may seek, as appropriate, any or all of the following remedies, or any other such remedy deemed appropriate by the County:

1. A temporary and/or permanent injunction;

2. An award of costs incurred for any investigation, inspection or monitoring survey undertaken, which helped establish the violation, and for costs of preparing and bringing a civil action under this Section;
3. An award of costs incurred in removing, terminating or otherwise correcting the adverse effects from the violation(s) of this Chapter, including reasonable attorney's fees and court costs;
4. An award of compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life. and/or
5. A civil penalty not to exceed \$5,000 per day for each violation of this Chapter.

#### **4.92.150 – Administrative Enforcement Powers; Appeal Process.**

Upon a finding by the Health Officer that a person, agency or entity has violated any provision of this Chapter, the Health Officer may issue an administrative order requiring that the violation be corrected and imposing a fine up to one thousand dollars (\$1,000) per violation. Each day that a violation continues shall be deemed a new and separate offense.

1. A Notice of the Fine shall be served by certified mail with a description of the underlying violation(s) and supporting facts. The Notice of Fine shall set forth the right to lodge an appeal to the Director contesting the imposition of the fine(s) and/or underlying violation(s).
2. Appeals must be made in writing, and shall set forth the factual basis for disputing the fines(s) and/or underlying violation(s). Any request for a hearing must be clearly stated in the appeal. Appeals must be addressed

to the Director, and must be received within fifteen (15) days of the date appearing on the Notice of Fine.

3. After reviewing the appeal, the Director shall prepare his or her decision in writing and send it to the appellant via certified mail. The decision shall constitute a final administrative order with no additional right to appeal.
4. If the fine is not paid within thirty (30) days from the date appearing on the Notice of the Fine or the written decision from the Director, if an appeal is filed, the fine may be referred to a collection agency and may affect the status of the Facility's CUPA Permit.

#### **4.92.160 – Remedies Not Exclusive.**

Remedies available under this Chapter are in addition to and do not supersede or limit any and all other legal remedies and penalties available under applicable law or regulation.

#### **4.92.170 – Disclaimer of Liability.**

- (a) 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 that there will be no unauthorized discharge of Hazardous Substances. This Chapter shall not create liability on the part of the County, any officer or employee thereof for any damages that result from reliance on this Chapter or any administrative decision lawfully made thereunder. Any person, agency or entity holding, Storing, using, processing, and disposing of Hazardous Substances within the County is advised to determine to its own satisfaction the level of protection, in addition to that required by this Chapter,

necessary or desirable to ensure that there is neither any unauthorized discharge or significant risk of unauthorized discharge of Hazardous Substances.

**4.92.180 – Conflict with Other Laws.**

Notwithstanding any provisions of this Chapter:

- (a) Whenever any provision of this Chapter conflicts with any state or federal laws or regulations pertaining to Storage Facilities, the stricter provision shall prevail.
- (b) Whenever any provision of this Chapter conflicts with the Fire Code as adopted by the County, the stricter provision shall prevail.

**4.92.190 – Severability.**

If any provision of this Chapter is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of this Chapter shall not be invalidated.

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