



Office of the City Manager

CONSENT CALENDAR

October 1, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Jordan Klein, Director, Planning and Development Department

Subject: Amending the Berkeley Hazardous Materials and Waste Management Code

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Chapter 15.12, Berkeley Hazardous Materials and Waste Management.

FISCAL IMPACTS OF RECOMMENDATION

There will be limited fiscal impacts from the proposed changes. Most of the adjustments would codify existing operating procedures and align the local ordinance with updated state regulations; the overall impact on permit revenue and staff time will be minimal.

CURRENT SITUATION AND ITS EFFECTS

The purpose of the Berkeley Hazardous Materials and Waste Management Code is to safeguard the community from dangers associated with mishandled hazardous materials and wastes. It provides standards for emergency planning and requires the disclosure of hazardous materials handling to the City of Berkeley. This code also upholds the community's right and need for basic information on the use, handling, storage and disposal of hazardous materials and wastes.

The Toxics Management Division (TMD) of the Planning and Development Department enforces the provisions of the Hazardous Materials and Waste Management Code by identifying violations during routine inspections of regulated facilities, and when responding to resident complaints.

The Berkeley Hazardous Materials and Waste Management Code has not been updated in 20 years and contains a number of outdated references. The code has not yet incorporated the requirements of a recent Assembly Bill and certain other State exemptions or thresholds. Most notably, a subsection of this code references authority granted to Local Oversight Programs (LOPs), but Berkeley has not administered a Local Oversight Program since it was decertified in 2013. A regular audit of TMD by the California Environmental Protection Agency (CalEPA) identified the code's references to a paper form and to LOP authority as outdated. These inconsistencies are noted in the State audit and require correction.

The Berkeley Hazardous Materials and Waste Management Code supports the City's Strategic Plan goal to create a resilient, safe, connected, and prepared city.

BACKGROUND

The Hazardous Materials and Waste Management Code was last enacted in 2004 through Ordinance 6,824-N.S., and lightly amended in 2006 through Ordinance 6,960-N.S.. Since then, changes in technology, legislation, priorities, and scope of work have made sections of this code either obsolete or incomplete. Importantly, in 2013, a new law (*Health and Safety Code Section 25297.01*) required changes to the State Water Board's LOP certification process in an effort to shift and refocus resources. Every LOP with fewer than 70 open cases was unable to recertify; this impacted six county and 15 local clean-up agencies, including Berkeley, which had only 42 cases open at that time. Existing language in the BMC references work under the purview of LOPs, though Berkeley no longer is one.

As part of a regular triennial state audit administered by CalEPA, a section of the BMC referencing LOP requirements and authority was found to be obsolete, requiring amendment. Other sections of the proposed Ordinance have also been revised for accuracy, clarity, consistency, and improvement. Key changes include:

- Removing references to the Unified Program Consolidated Form (UPCF), because information is now required to be submitted electronically online to the California Environmental Reporting System (CERS) website per State code.
- Incorporating Assembly Bill 2059, which passed after an incident in southern California severely injured responding firefighters. Previously, all retail products sold directly to consumers were exempt from reporting. The proposed ordinance includes a new section of the Berkeley Municipal Code which would require facilities that store more than 165 gallons of liquid, 600 cubic feet of gas, or 1,500 pounds of solid hazardous retail products at or above a National Fire Protection Association (NFPA) or Hazardous Materials Identification System (HMIS) rating of 3 to report these previously exempt hazardous materials. The goal is to enhance public safety by ensuring that emergency responders are aware of hazardous materials stored at retail facilities. This information is crucial for planning and responding to potential incidents, such as fires, spills, or other emergencies involving hazardous substances.
- Incorporating a State exemption for less than 1,320 gallons of fluid in an oil-filled electrical system from reporting requirements. This exemption recognizes that oil-filled electrical equipment with less than 1,320 gallons of fluid presents a lower risk and, therefore, does not necessitate the same level of reporting as larger systems. This exemption is consistent with regulations in surrounding jurisdictions.

- Changing permit requirements for subsurface drillings from three to five feet for consistency with surrounding jurisdictions, and adding a penalty clause for unpermitted work.
- Adding specific language to require closure applications for underground oil-filled equipment, such as heating oil tanks and oil/water separators, which is consistent with surrounding jurisdictions.
- Removing language referencing Local Oversight Program (LOP) work and remediation pursuant to the corrective Action required by the CalEPA during a State audit. This section maintains the authority to abate unlawful hazardous materials releases and also adds a new clause stating that building permit applicants may be required to receive LOP approval from outside agencies prior to permit issuance.
- Updating code references and adding clarifying language as needed.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Underground oil-filled equipment presents a significant hazard to groundwater because leaks are often undetected. Groundwater pollution is particularly difficult to address because it is hard to reach and can disperse over a wide area. The Berkeley Hazardous Materials and Waste Management Code provides clarity on closure requirements for such equipment and bolsters TMD's authority to ensure the equipment is removed and that any leaks have been adequately addressed. This code helps TMD to protect groundwater quality and enhances human and environmental protection.

RATIONALE FOR RECOMMENDATION

CalEPA required corrective action to address deficiencies found during the course of a State audit, and revisions to the Berkeley Hazardous Materials and Waste Management Code satisfy this requirement. Other obsolete, unclear, or insufficient sections were identified and updated.

ALTERNATIVE ACTIONS CONSIDERED

The Berkeley Hazardous Materials and Waste Management Code could be revised with fewer, or additional, amendments. TMD considered not recommending adoption of the State exemption for oil-filled electrical equipment, which could have greatly increased the number of regulated facilities in Berkeley. TMD also considered not recommending adoption of the state-recommended reporting requirements for certain hazardous retail products that were previously exempt; however, that could indirectly result in increased safety hazards for emergency responders and therefore staff do recommend that Berkeley institute these requirements.

CONTACT PERSON

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510-981-7466

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 15.12, HAZARDOUS
MATERIALS AND WASTE MANAGEMENT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 15.12 is amended to read as follows:

HAZARDOUS MATERIALS AND WASTE MANAGEMENT

Sections:

- 15.12.010– Findings and Purpose
- 15.12.020– Laws and Regulations Incorporated by Reference
- 15.12.030– Administration
- 15.12.040– Filing of Disclosure Information
- 15.12.050– Quantities Requiring Disclosure
- 15.12.060– Applicability of California Accidental Release Program (CalARP)
- 15.12.070– Permits and Registration
- 15.12.080– Reporting Unauthorized Releases
- 15.12.090– Closure
- 15.12.100– ~~Unauthorized Release Abatement~~ Remediation
- 15.12.110– Community Right to Know; Public Records
- 15.12.120– Fees and Penalties
- 15.12.130– Inspections
- 15.12.140– Enforcement
- 15.12.150– Administrative Enforcement
- 15.12.160– Relation to Existing Laws; Effective Dates
- 15.12.170– Relation to Other Laws

15.12.010 – Findings and Purpose

The City Council finds and declares:

- A. Hazardous materials and wastes present in the community may pose acute and chronic health hazards to individuals who live, visit and work in the City of Berkeley and who are exposed to such substances as a result of fire, spills, industrial accidents, or other releases or emissions.
- B. It is the intent of the Council to recognize the community’s right and need for basic information on the use, handling, storage and disposal of hazardous materials and wastes in Berkeley and to establish an orderly system for the provision of such information.
- C. It is further the intent of the Council that the system of disclosure set forth herein shall provide information essential to firefighters, health officials, planners, elected officials, workers and their representatives, businesses and residents in meeting their

responsibilities for the health and welfare of the community in such a way that the statutory privileges against disclosure of non-public records are not abridged.

D. Businesses that safely handle hazardous materials and wastes are beneficial to the economic life of the City and community. It is the intent of the Council to provide program provisions that facilitate the continued and growing presence of safe businesses.

E. This chapter shall apply within the City of Berkeley, and also in contiguous areas within ~~the City of Oakland~~ surrounding cities for which Berkeley has regulatory and enforcement authority by agreement or otherwise.

F. It is further the intent of the Council to conform the provisions of this chapter to California laws regulating the storage and handling of hazardous materials and wastes, including: California Health and Safety Code Division 20, Chapter 6.5 (hazardous waste), Chapter 6.67 (aboveground storage of petroleum), Chapters 6.7 ~~and 6.75~~ (underground storage tanks), Chapter 6.11 (unified program), Chapter 6.95 Article 1 (hazardous materials) and Article 2 (accidental release prevention); and California Water Code Division 7, Chapter 10, Article 4 (water, cathodic protection and groundwater monitoring wells). The City of Berkeley hereby assumes responsibility and exclusive jurisdiction for these laws, to the extent authorized by law, including designation as a Certified Unified Program Agency (CUPA). These state laws, and state regulations adopted in furtherance of these laws, are incorporated into this chapter by reference, except as modified within this chapter.

G. It is further the intent of the Council to conform the provisions of this chapter to California laws regulating the remediation of contamination resulting from releases of hazardous materials and wastes, including those provided by California Health and Safety Code Division 20, Chapter 6.5 (hazardous waste), Chapter 6.67 (aboveground storage of petroleum), Chapter 6.11 (unified program), Chapter 6.95 Article 1 (hazardous materials) and Article 2 (accidental release prevention); and California Water Code Division 7, Chapter 10, Article 4 (water, cathodic protection and groundwater monitoring wells), ~~the laws identified in subsection F of this Section 15.12.010, as well as Chapter 6.8 of Division 20 of the California Health and Safety Code, and Division 7 of the California Water Code. In addition to the provisions set forth in Chapter 1.24 of the Berkeley Municipal Code, the City of Berkeley hereby assumes responsibility, to the extent authorized by law, for the abatement of nuisances and remediation of contamination resulting from releases of hazardous materials and waste.~~

15.12.020 – Laws and Regulations Incorporated by Reference

The following provisions of state law, with their implementing regulations and agency resolutions, are hereby incorporated into this chapter by reference: California Health and Safety Code Division 20, Chapter 6.5 (hazardous waste), Chapter 6.67 (aboveground storage of petroleum), Chapters 6.7 ~~and 6.75~~ (underground storage tanks), Chapter 6.8 (Carpenter-Presley Tanner Hazardous Substances Account Act), Chapter 6.11 (unified program), Chapter 6.95 Article 1 (hazardous materials) and Article 2 (accidental release prevention); and Division 7 of the California Water Code (water quality), and Department of Water Resources Bulletins No. 74-81 and 74-90 (water, cathodic protection and groundwater monitoring wells). This chapter contains additional

stricter local requirements in accordance with Sections 25299.2 and 25500 of the California Health and Safety Code. This chapter also incorporates by reference provisions of the Uniform Fire and Building Codes which pertain to management, containment, security and separation of hazardous materials and wastes, as they may be adopted from time to time by the City of Berkeley. The provisions of this chapter shall conform to these incorporated provisions as they may be amended, unless explicitly modified within this chapter.

15.12.030 – Administration

This chapter shall be administered and enforced by the hazardous materials manager. The hazardous materials manager may, for purposes related to this chapter, undertake actions, including but not limited to, the maintenance and verification of files relating to this chapter, the acquisition of additional information on hazardous materials and wastes and their handling, public education regarding hazardous materials and wastes, and promotion of pollution prevention, recycling of wastes, and compliance with this chapter.

15.12.040 – Filing of Disclosure Information

A. Each handler, or facility under the jurisdiction of the City of Berkeley, that handles hazardous material or waste in a quantity subject to disclosure under the provisions of Section 15.12.050 at any time must submit the following information at the time it begins operations, or at the time it first begins to handle a hazardous material or waste that must be disclosed:

~~1. Unified Program Consolidated Form (UPCF), including additional information required under this chapter; and~~

~~2. All information required to be submitted under the authority of Health and Safety Code Sections 25505, 25508(a)(1), 25508.1, 25508.2, and 25508.3; and any additional information required under this chapter. 25503, 25503.3, 25503.5, 25504, 25504.1, 25509 and 25509.3.~~

B. In addition, each handler shall submit annually either a completed certification, signed under penalty of perjury, that previously filed information remains accurate, or revised information.

~~C. This information must be submitted electronically to the California Environmental Reporting System (CERS) pursuant to California Health and Safety Code Sections 25505 and 25508(a)(1).~~

~~GD. A handler shall complete a revised submittal to CERSfile a revised UPCF, including additional information required under this chapter, at least once every three~~

years or as specified by the hazardous materials manager. In addition, a handler shall complete a revised submittal to CERS~~file a revised UPCF~~ within 30 days after any of the following:

1. Introduction of a new hazardous material or waste, or an increase in the total quantity handled of any previously disclosed hazardous material or waste by 100% or more above the quantity previously disclosed, unless the material or waste is exempted from disclosure by any of the exemptions set forth in Section 15.12.050;
2. Change of business address;
3. Change of business ownership; or
4. Change of business name.

DE. The hazardous materials manager shall review each UPCF-CERS submittal and shall accept the form it if it conforms to the requirements of subsection A of this section, and provides complete and adequate information needed for the protection of safety and health and of the environment, or shall require the handler to submit additional information to be included in the form before it may be accepted.

EE. A handler shall supply upon request to the hazardous materials manager additional information determined by the hazardous materials manager to be necessary to protect health and safety or the environment.

FG. All filings shall be made on the City's most current version of the applicable form. If a state form is used, a handler must comply with all additional stricter local requirements in this chapter.

GH. A short form hazardous materials management plan may be required at the discretion of the hazardous materials manager or Fire Chief 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 standard temperature and pressure for compressed gases. Such a plan shall include the following components:

1. General facility 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 and wastes being stored and whether any of the material is a waste;
3. Information describing that the hazardous materials and wastes will be stored and handled in a safe manner and will be appropriately contained, separated and monitored;
4. Assurance that security precautions have been taken, employees have been appropriately trained to handle the hazardous materials and wastes and react to emergency situations, adequate labeling and warning signs are posted, adequate emergency equipment is maintained, and the disposal of hazardous materials and wastes will be in an appropriate manner.

H. Each handler, or facility under the jurisdiction of the City of Berkeley, that is subject to the disclosure requirements under the provisions of Section 15.12.050(C)(5) shall file a hazardous waste generator reporting packet in lieu of the requirements of Section 15.12.040(A). The hazardous waste generator reporting packet will include forms to identify the generator, the waste streams, an Emergency Response Plan/Contingency Plan per Health and Safety Code Section 25504(b), and any additional information as required by the hazardous materials manager.

I. All facilities that manufacture or use manufactured nanoparticles shall submit a separate written disclosure of the current toxicology of the materials reported, to the extent known, and how the facility will safely handle, monitor, contain, dispose, track inventory, prevent releases and mitigate such materials.

15.12.050 – Quantities Requiring Disclosure

A. Except as provided in the following subsections of this section, each handler who handles the following aggregate quantities of all hazardous materials and wastes at any time during a year shall disclose all such handling: 500 pounds or more of all solid hazardous materials and wastes; 55 gallons or more of all liquid hazardous materials and wastes; or 200 cubic feet or more at standard temperature and pressure of all gaseous hazardous materials.

B. Hazardous materials contained solely in consumer products packaged for distribution to, and use by, the general public shall be exempt from disclosure under this chapter ~~unless the hazardous materials manager has notified the handler in writing that the handling of certain quantities of specified consumer products requires disclosure under this chapter in response to health and safety concerns.~~except as follows:

1. When facilities are handling quantities of consumer product sold at a retail establishment that have a National Fire Protection Association or "NFPA" or Hazardous Materials Identification System or "HMIS" rating of 3 or 4 and is stored, at any time, in quantities equal to, or greater than, 165 gallons for a liquid, 600 cubic feet for a gas, and 1,500 pounds for a solid.

2. When the hazardous materials manager has notified the handler in writing that the handling of certain quantities of specified consumer products requires disclosure under this chapter in response to health and safety concerns.

C. If the aggregate storage capacity of oil at the facility is less than 1,320 gallons and a spill prevention control and countermeasure plan is not required pursuant to Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations, fluid in an oil-filled electrical system that is not contiguous to an electric facility shall be exempt from disclosure under this chapter unless the hazardous materials manager has notified the handler in writing that this handling requires disclosure under this chapter in response to health and safety concerns.

CD. The following disclosure requirements shall apply in addition to those in subsections ~~A, and B, and C~~ of this section:

1. The handler shall disclose handling of any extremely hazardous substance in quantities that require disclosure under the provisions of Section 25532(j) of Division 20 of Chapter 6.95 of the California Health and Safety Code.

2. The handler shall disclose the handling of any quantity of a material or waste that is or contains a material subject to regulation by the Nuclear Regulatory Commission in Title 10 of the Code of Federal Regulations, including any by-product, licensed, source, or special material. Disclosure is not required for manufactured products, such as tritium exit signs, smoke detectors, china, and similar products that are in use by the consumer, as well as naturally occurring radioactive materials, provided that these items are properly disposed of at the end

of consumer use. Facilities may petition the hazardous materials manager for exemption of low risk or short-lived radiological materials, wastes, or products.

3. The handler shall disclose the handling of any quantity of an etiologic agent, as defined in subsection D of Section 15.08.060 of this title. Vaccines are exempt from disclosure requirements.

4. The handler shall disclose the handling or generation of any hazardous waste as defined in this title.

5. As required by the Fire Chief or hazardous materials manager, the handler shall disclose the handling of any hazardous material, as defined by the Uniform Fire Code, in a quantity at least equal to the permit quantity threshold established in the Uniform Fire Code, if that quantity is less than the applicable quantity set forth in subsection A. Permits under Section 105 of the Uniform Fire Code are under the jurisdiction of the Berkeley Fire Department. Submission of the inventory does not constitute meeting the requirements of UFC Section 105.

6. Each laboratory shall identify separately in its disclosure each hazardous material or waste handled at any time during a year in the following quantity: 500 pounds or more of any solid hazardous material or waste; 55 gallons or more of any liquid hazardous material or waste; or 200 cubic feet or more at standard temperature and pressure of any gaseous hazardous material or waste. In addition, each laboratory shall report all other hazardous materials and wastes handled during a year, but may do so by using fire code hazard classes.

7. All manufactured nanoparticles, defined as a particle with one axis less than 100 nanometers in length, shall be reported in the disclosure plan.

15.12.060 – Applicability of California Accidental Release Program (CalARP)

If the hazardous materials manager determines there to be a greater risk due to the nature of the material stored, the method of storage, location, operations, history of a facility, or other concern, the hazardous materials manager may require a facility to prepare a Risk Management Plan (RMP) and to be subject to Article 2 of Division 20 of the California Health and Safety Code even if quantities of regulated substances are less than state threshold quantities as defined in Section 25532(j) of Chapter 6.95 of Division 20 of the California Health and Safety Code.

15.12.070 – Permits and Registration

A. No person shall handle any quantity of hazardous material or waste subject to disclosure under Section 15.12.050, without obtaining all necessary permits and registrations from the hazardous materials manager. All applications for permits or registrations required by this title shall be upon forms furnished by the hazardous materials manager. Each application shall provide the owner's and/or operator's name and address, the designated place, purpose or object to which the permit or registration shall apply, and such additional information as the hazardous materials manager may consider necessary to determine compliance with this title. All applications for registrations and permits shall contain at least the disclosure information required by Section 15.12.040, and shall be accompanied by all plans or specifications required by this title. Applicants for additional registrations or permits shall provide the following additional information:

1. If underground storage tanks are on the place of business, the Unified Program Consolidated Forms applicable CERS sections concerning underground storage tanks shall be completed and submitted;
2. If hazardous wastes generated on-site are being treated on-site and the treatment is subject to the permit-by-rule, conditionally authorized or conditionally exempt tier, the Unified Program Consolidated Forms applicable CERS sections concerning on-site hazardous waste treatment shall be completed and submitted; and
3. Other information as required by the hazardous materials manager.

B. No person shall construct or destroy a well subject to this title, or a borehole more than three-five feet deep, including dewatering wells, without obtaining a permit from the hazardous materials manager.

C. Upon receipt of a completed application for a permit or a registration, the hazardous materials manager shall make the necessary review, investigation or inspection of the application, applicant, plans, specifications, existing or proposed place, operation or object to determine whether they will meet the requirements of this title. The hazardous materials manager may refer the application to such other governmental agencies as

the hazardous materials manager determines may be necessary to determine whether there will be compliance with other applicable laws.

D. If the hazardous materials manager finds that the applicant, place, operation, purpose or object will comply with the requirements of this title, and the place, operation, or object will be conducted in such a manner as to accomplish the objectives and purposes of all applicable laws, and all fees are paid in full, then the hazardous materials manager shall issue a permit or registration, subject to such reasonable conditions and limitations as are required under the circumstances.

E. Permits and registrations are not transferable. Any permit or registration issued to a particular person or for a designated place, operation, purpose or object shall not be valid for use by or for any other person, place, operation, purpose or object.

F. The issuance or granting of a permit or registration, or the approval of plans and specifications, by the hazardous materials manager shall not be construed to be a permit or registration for, or an approval of, any violation of this title or other applicable laws, nor to relieve the applicant from any liability for any other permit, registration or other approval required by other applicable laws.

G. The approval of plans and specifications shall not prevent the hazardous materials manager from thereafter requiring the correction of errors in such plans and specifications, or from preventing installation and construction operations being carried out thereunder when in violation of this title.

H. Every permit or registration issued under this title shall expire as indicated on the permit, or as otherwise provided by the hazardous materials manager, unless sooner suspended or revoked by the hazardous materials manager.

I. Whenever the work authorized by any approval of submitted plans and specifications is not commenced within 90-120 days after the date of such approval or date of issuance of any required building permit, or whenever the work authorized by such approval is suspended for a period of more than 90-120 days, such approval shall expire by limitation. Before the work authorized by such prior approval shall be commenced or continued, a new approval shall be obtained as provided in this title.

J. Every installation, alteration, construction or reconstruction shall be in accordance with the approved plans and specifications, and shall not be changed, modified or altered without written approval of the hazardous materials manager.

K. Every person required to obtain a permit or registration under this title must present a copy of such permit or registration, signed by the hazardous materials manager, when applying for any other business registration, license or permit that may be issued by the City. No building or other construction permit shall be issued by the City to any person covering any work related to this title for which prior approval by the hazardous materials manager of plans and specifications is required herein unless such approval has been granted.

L. The permittee or registrant shall retain each permit or registration issued under this title at its facility, immediately available upon request by an inspector or the hazardous materials manager.

M. Any permit or registration granted under this title may be revoked or suspended by the hazardous materials manager, after written notice, for failure to comply with the requirements of this chapter, or with the conditions of such permit or registration.

1. The permittee or registrant may appeal the revocation or suspension to the City pursuant to the procedures set forth in Chapter 1.24, beginning at Section 1.24.070 of the Berkeley Municipal Code.

2. In the event the handler appeals, the City shall schedule an administrative hearing before a hearing officer designated by the City. Notice of the hearing shall be served personally, or by first class mail, postage prepaid. The notice shall specify the time and place of the hearing, and shall be served not less than ten days prior to the time set for the hearing.

3. The hearing officer shall hear and rule on the permittee's or registrant's appeal. The handler may appear at the hearing by counsel. The formal rules of evidence shall not apply. All witnesses shall be sworn and each party shall have the right to cross-examine adverse witnesses. The hearing officer shall rule on the appeal, and may either affirm or overrule the revocation or suspension, or make such other determinations as are consistent with this chapter.

4. The hearing officer shall notify the handler of their determination in writing, by personal service or by first class mail, postage prepaid.

5. Review of the hearing decision shall be subject to judicial review pursuant Chapter 2.96 of the Berkeley Municipal Code and California Code of Civil Procedure Sections 1094.5 and 1094.6.

15.12.080 – Reporting Unauthorized Releases

The handler or any employee, authorized representative, agent or designee shall, upon discovery, immediately report to the hazardous materials manager any actual or threatened unauthorized release of a hazardous material or waste. Releases required to be reported under this section shall include, but need not be limited to, all unauthorized releases that the handler is required to report to any agency under any other law governing the handling of hazardous materials or wastes. The requirement of this section is in addition to any other requirements to report releases, and compliance with this section does not constitute compliance with any other requirements to report releases to any other agency.

15.12.090 – Closure

A. It shall be unlawful for any person to abandon or close a hazardous materials or waste storage unit, hazardous waste treatment unit or facility, until a closure application has been submitted to the hazardous materials manager and found by the hazardous materials manager to be complete.

B. It shall be unlawful for any person to abandon or close underground oil-filled equipment such as heating oil tanks, hydraulic lifts, and oil/water separators, until a closure application has been submitted to the hazardous materials manager and found by the hazardous materials manager to be complete.

BC. Closure requires the following steps:

1. A handler shall submit a closure application to the hazardous materials manager at least 45 days prior to abandonment or closure of the regulated unit or facility as described in 15.12.090.A. and at least 10 days prior to the closure of underground oil-filled equipment as described in 15.12.090.B. The closure application shall demonstrate to the satisfaction of the hazardous materials manager that all hazardous materials and wastes which are or have been handled or released in the regulated area will be transported, disposed of or reused in a manner protective of public health and safety and the environment, and that any residual contamination will be removed before closure is complete.
2. The hazardous materials manager shall notify the applicant that the closure application is complete and has been accepted, notify the applicant of any

deficiencies in the closure application that must be corrected prior to closure, or, depending on the complexity of the closure, require a more detailed closure plan.

3. Each regulated area being closed shall be subject to inspection by the hazardous materials manager to confirm that closure has been undertaken in conformity with the closure application and/or plan and that all contamination has been removed.

4. If contamination associated with the regulated area cannot be removed prior to closure, then the closure plan shall include a definite plan for assessing, monitoring, and removing any such contamination. The hazardous materials manager may accept a plan under this subsection only upon a finding that the plan provides adequate protection to public health and safety and the environment.

15.12.100 – Remediation Unauthorized Release Abatement

A. The handler and any person responsible for handling a hazardous material or waste subject to this chapter, including quantities exempt from disclosure under Section 15.12.050, shall institute and complete all actions necessary to remedy the effects of any unauthorized release. This shall include contaminated buildings, equipment, soil or other media as appropriate to eliminate threats to human health or the environment. This subsection shall not affect any rights of the responsible party or third parties to recover appropriate costs and expenditures from any party.

B. A responsible party can meet the above conditions through an appropriate state or federal agency.

C. All or any part of any real property, or any building or structure located thereon, at which contamination from hazardous materials or wastes is found, which contamination is not being managed in compliance with the provisions of this section, are hereby declared a public nuisance and imminent health threat. The hazardous materials manager may require abatement of this condition by rehabilitation, removal, demolition or repair under procedures and standards provided in this chapter (including provisions incorporated by reference in Section 15.12.020), consistent with the provisions of Chapter 1.24 of the Berkeley Municipal Code.

D. In addition to the requirements set forth in Chapter 1.24, the following shall apply:

1. The notice to abate may require the handler to cease and desist any manufacturing or hazardous material handling activities that cause or contribute to the nuisance or imminent health threat.
2. The notice may specify the corrective action required or require the owner or handler to prepare a Plan of Corrective Action. When the exact nature and extent of contamination cannot be determined based on information available at the time the notice is served, the notice may require the owner and the handler to propose measures in a Plan of Corrective Action to more fully characterize the contamination, present the results of such characterization, and plan for corrective action within the time specified in the notice.

E. In the event that any person undertakes, either voluntarily or under order of the hazardous materials manager, to clean up or abate the effects of any unauthorized hazardous material or waste release, discharge or deposit upon or into any property or facility within the City, the hazardous materials manager may take such action as is necessary to supervise or verify the adequacy of the cleanup or abatement.

F. The City of Berkeley is authorized to clean up or abate the effects of any hazardous material or waste unlawfully released, discharged or deposited upon or into property or facilities within the City. The following persons are considered responsible parties and shall be jointly and severally liable to the City for the payment of all costs incurred by the City as a result of such cleanup or abatement activity:

1. The owner or past owners of the property;
2. The person or persons whose negligent or willful act or omission proximately caused such release, discharge or deposit;
3. The person or persons who owned or had custody or control of the hazardous substance or material at the time of such release, discharge, or deposit, without regard to fault or proximate cause; and
4. The person or persons who owned or had custody or control of the container which held such hazardous material or substance at the time of or immediately prior to such release, discharge or deposit, without regard to fault or proximate cause.

G. As a condition of building permit approval, an applicant may be required to provide environmental screening clearance from either the San Francisco Bay Regional Water

Quality Control Board (RWQCB), Department of Toxic Substances Control (DTSC), or the Alameda County Department of Environmental Health's Local Oversight Program (LOP). Clearance from one of these regulatory agencies will ensure that the property meets development investigation and cleanup standards for the specific use proposed on the property.

GH. See Section 15.12.070 for all permitting requirements.

15.12.110 – Community Right to Know; Public Records

A. Subject to the qualifications and exemptions provided in this section, all forms, permits and registrations are public records and will be publicly available during normal business hours in the offices of the hazardous materials management program in accordance with the following procedures:

1. Written application for disclosure of information shall be submitted to the hazardous materials manager, on a form provided by the City. The written application shall identify the address of the business or City facility for which information is sought. The written application shall also include the applicant's name, address, telephone number, and verification of the applicant's identity.
2. ~~The information requested~~ Information requests shall ~~be provided~~ receive response within ten working-calendar days after the submission of a complete application. ~~The information requested shall be provided~~ except ~~that requests~~ for information that is exempt from disclosure under provisions of the Public Records Act (commencing with Section 6250 of the Government Code) or other law or regulation, or has been designated as trade secret or confidential business information by the handler, which shall be subject to the subsections of this section regarding such records. As used in this chapter, trade secret shall have the meaning given by Sections 25290 and 25511 of the Health and Safety Code, Section 6254.7 of the Government Code, and Section 1060 of the Evidence Code.

B. If a handler believes that information required to be disclosed on the disclosure form, a permit or registration application, or under the terms of subsection E of Section 15.12.040 should be exempt from disclosure under this section, the handler shall notify the hazardous materials manager in writing identifying the information the handler believes should be exempt from disclosure, and the basis for such belief. The hazardous materials manager has the right to accept or reject the request.

C. Upon receipt of a request for the release of information to the public, which includes information identified by the handler as exempt from disclosure, the hazardous materials manager shall notify the handler in writing of the request by certified mail, return receipt requested. The hazardous materials manager shall release the information 45 days after the mailing of such notice, unless prior to the expiration of this time period, the handler institutes an action in an appropriate court for a declaratory judgment that such information is subject to protection from disclosure and/or obtains an injunction prohibiting disclosure. The member(s) of the public applying for disclosure shall be considered the real party(ies) in interest in any such action.

D. Any information reported to or otherwise obtained by the hazardous materials manager, or a designee or representative, which has been determined as exempt from disclosure by the hazardous materials manager, shall not be disclosed to anyone except:

1. Any officer or employee of the City of Berkeley, County of Alameda, State of California, or United States of America, in connection with the official duties of such officer or employee under any law for the protection of health. For the purposes of this section, fire and emergency response personnel and health personnel operating within the jurisdiction of the City, and any contractor who is furnished information that is protected from disclosure by this section, shall be considered employees of the City; or
2. To any physician or registered nurse who has determined that such information is necessary to the medical treatment of their patient.
3. Any person who received information protected from disclosure by this section because they qualifiesd under subdivisions 1 or 2 of this subsection and who, knowing that disclosure of this information is prohibited, knowingly and willfully discloses the information in any manner to any person not entitled to receive it, shall be guilty of a misdemeanor.

E. Information certified by appropriate officials of the United States as necessarily kept secret for national defense purposes shall be accorded the full protection against disclosure as specified by such officials in accordance with the laws of the United States.

F. The provisions of this section shall not permit a handler of hazardous materials to refuse to disclose to the hazardous materials manager information required by this chapter.

15.12.120 – Fees and Penalties

A. The City Council shall establish, by resolution, from time to time, hourly billable rates and a schedule of fees for each class of permit and registration issued under this chapter, for additional late fees, charges including penalties and interest for delinquent payments, and for additional services provided by the City to administer and enforce this chapter. These fees shall be sufficient to allow the City to recover its costs of administering this chapter.

B. The amount of any fee or penalty imposed by the provisions of this chapter shall be deemed a debt to the City.

1. If such fee or penalty is not paid when due, such fee or penalty shall constitute an assessment against such business property and shall be a lien on the property for the amount thereof, which may be imposed and enforced as set forth in Chapter 1.24 of the Berkeley Municipal Code.

C. In addition, the City may collect fees in any other manner permitted by law.

15.12.130 – Inspections

A. In order to carry out the purposes of this chapter, the hazardous materials manager or their designee has the authority to inspect any place where hazardous materials or wastes are handled, or any place where the hazardous materials manager has reason to believe that an unauthorized release of a hazardous material or waste has occurred, is occurring, or may occur. This authority extends to any property within 2,000 feet of property on which hazardous materials or wastes are handled. The authority conferred by this section includes the authority to conduct any monitoring or testing of any aboveground or underground storage tank system. The right of entry shall be exercised only at reasonable hours unless otherwise required by an emergency, and entry shall be made to any establishment or property only with the consent of the owner or tenant thereof, or with proper inspection warrant or other remedy provided by law to secure entry.

B. All inspections under this chapter shall be at the discretion of the City and nothing in this chapter shall be construed as requiring the City to conduct any such inspection nor shall any actual inspection made imply a duty to conduct any other inspection.

Furthermore, nothing in this chapter shall be construed to hold the City or any officer, employee or representative of the City responsible for any damage to persons or property by reason of making an inadequate or negligent inspection or by reason of any failure to make an inspection or reinspection.

15.12.140 – Enforcement

A. Any party that violates any provision of this title shall be liable for civil or criminal penalties, as appropriate, to the full extent provided by state law and this title. This liability may include, but is not limited to, liability for administrative civil penalties, as provided in Section 15.12.150. The remedies provided for under this section are in addition to any the City or any person might have under any other applicable law.

B. Except as otherwise provided, violations of this title are misdemeanors, but may be charged as infractions as provided in Chapter 1.20, in the discretion of the citing officer.

C. Any condition of property which is a violation of this title is hereby declared to be a public nuisance, which shall be subject to the provisions of Chapter 1.24.

D. The hazardous materials manager may cooperate with the City Attorney or the District Attorney as appropriate, in bringing judicial action to enforce any provision of this title. These actions may seek the penalties and relief to the full extent provided under the law, including recovery of the reasonable costs of the City of Berkeley and the District Attorney in prosecuting the enforcement action.

E. Remedies under this chapter are cumulative.

F. The City may recover the costs set forth in subsection G of this section in any administrative proceeding conducted under the authority of this title or Health and Safety Code Section 25404 et seq., any nuisance abatement action under Chapter 1.24, or any civil action filed pursuant to this title, to the extent the City is successful in such proceeding or action.

G. The following costs shall be recoverable:

1. Inspection and reinspection costs;

2. Costs of remediation, if any;
3. Other enforcement costs;
4. Hearing officer costs if a state hearing officer is used;
5. Incidental hearing costs, such as transcripts, transportation, duplication, filing and service costs; and
6. Other personnel costs to the extent reasonably necessary to enforce the law or remediate a violation of law.

H. In any civil action filed pursuant to this chapter, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs; provided, that, pursuant to Government Code Section 38773.5, attorneys' fees shall only be available in an action or proceeding in which the City has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

15.12.150 – Administrative Enforcement

A. The hazardous materials manager shall be responsible for the issuance of administrative enforcement orders and assessment of administrative penalties for violations of this title. These procedures shall, at a minimum, comply with applicable requirements of Sections 25187, 25404 et seq., 25514.5, and 25514.6 of the Health and Safety Code, and their implementing regulations.

B. The City Council finds and declares:

1. Administrative hearings pursuant to this title will often involve existing or potential threats to public health, safety and welfare, as well as to the environment, thus implicating matters of great public interest. The public at large has a significant stake in being able to observe and participate in such hearings, without undue procedural constraints.
2. The public, the City and the parties to proceedings under this title have a significant interest in their speedy and economical resolution; and the City and public have an additional vital interest in prompt compliance and remediation, when appropriate.

3. Material issues in administrative hearings under Health and Safety Code Sections 25404 et seq. will seldom, if ever, revolve around questions of the personal credibility of witnesses, or testimony of percipient witnesses. Rather, material factual issues will almost always involve technical issues, which will be fully explained in written reports, which will be available to all parties. Accordingly, there is little, if any, benefit to be gained by formal discovery, depositions, cross-examination, and similar formal evidentiary processes.

4. Administrative hearings under Health and Safety Code Sections 25404 et seq. will allow more effective and efficient resolution of issues than formal hearings under Government Code Sections 11500 et seq.

C. Pursuant to Government Code Section 11445.20, administrative hearings held pursuant to Health and Safety Code Sections 25404 et seq. shall be informal hearings as defined in Government Code Sections 11445.10 et seq.

D. Notwithstanding anything to the contrary, nothing herein is intended to, or shall, prevent the hearing officer from converting an informal hearing to a formal hearing under Government Code Section 11445.50, allowing cross-examination in an informal hearing, or taking any other action authorized by law.

E. For purposes of Government Code Section 11440.10, the agency head as defined in Government Code Section 11405.40 shall be the City Manager or their designee; provided that the City Manager may not designate a person subject to the authority, direction, or discretion of the hazardous materials manager.

15.12.160 – Relation to Existing Law; Effective Dates

A. The requirements set forth in this chapter are declarative of existing law and the responsibilities of handlers of hazardous materials and wastes within the City of Berkeley, including contiguous areas within ~~the City of Oakland~~ surrounding cities for which Berkeley has received regulatory and enforcement authority by agreement or otherwise, as of the effective date of the ordinance set forth in this chapter. Handlers filing disclosure forms or permit or registration applications under this chapter shall use revised forms at the time of their first update of the relevant document(s) after the effective date of this revised chapter.

B. The City of Berkeley, under the terms of Section 25502 of the Health and Safety Code, hereby assumes and reaffirms responsibility and exclusive jurisdiction within the

City, including contiguous areas within ~~the City of Oakland~~ surrounding cities for which Berkeley has received regulatory and enforcement authority by agreement or otherwise, for implementation of Chapter 6.95 of Division 20 of the Health and Safety Code (commencing with Section 25500), regulating the inventory and preparation of hazardous materials business plans, and regulating risk management planning to prevent accidental releases of regulated substances. This section is declarative of the assumption and responsibilities formerly codified in Chapter 11.52 of the Berkeley Municipal Code.

C. The City of Berkeley, under the terms of Section 25582 of the Health and Safety Code, hereby assumes and reaffirms responsibility and exclusive jurisdiction within the City, including contiguous areas within ~~the City of Oakland~~ surrounding cities for which Berkeley has received regulatory and enforcement authority by agreement or otherwise, for implementation of Health and Safety Code Sections 25280 et seq., regulating the underground storage of hazardous substances. This section is declarative of the assumption and responsibilities formerly codified in Chapters 11.52 and 11.54 of the Berkeley Municipal Code (underground storage of hazardous substances).

D. The City of Berkeley, under the terms of Health and Safety Code Section 25404.3 and the certification of the City by the California Environmental Protection Agency on March 1, 1997, hereby assumes and reaffirms responsibility and exclusive jurisdiction within the City, including contiguous areas within ~~the City of Oakland~~ surrounding cities for which Berkeley has received regulatory and enforcement authority by agreement or otherwise, for implementation of Health and Safety Code Sections 25404 et seq., providing for unified programs to regulate hazardous materials and wastes.

15.12.170 – Relation to Other Laws

A. When conflicts arise between the contents of this chapter and any other provisions of the Berkeley Municipal Code, the most stringent provisions shall prevail, provided said provisions are not in conflict with the laws set forth in Section 15.12.020.

B. The disclosure of hazardous materials information following the provisions of this chapter shall not in any way affect any other liability or responsibility of a handler with regard to safeguarding the health and safety of any employee or any other person or the environment.

C. 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 improper release of hazardous materials or wastes. This chapter shall not create liability on the part of the City, any officer or employee thereof for any damages that result from reliance on this chapter or any administrative decision lawfully made hereunder. All persons handling hazardous materials or wastes within the City are advised to determine to their own satisfaction the level of additional protection necessary or desirable to ensure that there is no improper release of hazardous materials or wastes.

D. Subject to the limitations of due process, and notwithstanding any other provisions of this code, whenever the words "shall" are used in establishing a responsibility or duty of the City, its elected or appointed officers, employees, or agents, it is the intent of the City Council that such words establish a discretionary responsibility or duty requiring the exercise of judgment and discretion.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

