

(O-83-216)

ORDINANCE NUMBER O- 15964 (New Series)

Adopted on MAY 9 1983

AN ORDINANCE AMENDING CHAPTER IV, ARTICLE 2, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 9, SECTIONS 42.0901 THROUGH 42.0915, RELATING TO DISCLOSURE OF HAZARDOUS MATERIALS.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter IV, Article 2, of the San Diego Municipal Code be, and the same is hereby amended by adding Division 9, Sections 42.0901 through 42.0915, to read as follows:

DIVISION 9

DISCLOSURE OF HAZARDOUS MATERIALS

SEC. 42.0901 FINDINGS AND PURPOSE

The Council hereby finds and declares that:

(a) Hazardous substances and hazardous wastes present in the community may pose acute and chronic health hazards to individuals who live and work in the City, and who are exposed to such substances as a result of fires, spills, industrial accidents, or other types of releases or emission.

(b) The people who live and work in the City have a right and need to know of the use and potential hazards of hazardous materials in the community in order to plan for and respond to exposure to such materials.

(c) Basic information on the location, type, quantity and the health risks of hazardous materials used, stored, or disposed of in the City is not now available to fire fighters, health officials, health care providers, planners, elected officials, and residents.

(d) It is the intent of the Council that this division recognize the community's right and need for basic information on the use and disposal of hazardous materials in the City and that it establish an orderly system for the provision of such information including appropriate education and training for use of information.

(e) It is further the intent of the Council that the system of disclosure set forth in this division shall provide the information essential to fire fighters, health officials, health care providers, planners, elected officials, and residents in meeting their responsibilities for the health and welfare of the community in such a way that the statutory privilege of trade secrecy is not abridged.

SEC. 42.0902 HEALTH PERMIT REQUIRED

Health regulated businesses shall include establishments which use or handle hazardous materials as defined herein. A separate health permit shall be required for each such establishment.

SEC. 42.0903 DEFINITIONS

For the purpose of this division the following

definitions shall apply:

(a) "Carcinogen" means a substance or agent which can cause cancer. For purposes of this division, carcinogens are chemicals for which there is sufficient evidence of carcinogenicity as specified in guidelines prepared by the International Agency for Research on Cancer and the National Cancer Institute and are listed on the list of hazardous substances established by the Director of Industrial Relations pursuant to Section 6380 of the Labor Code.

(b) "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.

(c) "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.

(d) "Disclosure form" means the written request for information prepared by the Health Officer pursuant to Section 42.0908.

(e) "EPA Waste Stream Code" means the identification number assigned pursuant to the regulations of the U.S. Environmental Protection Agency to specific types of hazardous waste.

(f) "Establishment" shall mean a single business

operation conducted on the same or contiguous parcels of property under the same ownership or entitlement to use.

(g) "Hazardous material" means any hazardous substance or hazardous waste.

(h) "Hazardous substance" means any substance or product:

(1) For which the manufacturer or producer is required to prepare a Material Safety Data Sheet ("MSDS") for the substance or product pursuant to the Hazardous Substances Information and Training Act (commencing with Section 6360, Chapter 2.5, Part 1 of Division 5 of the Labor Code) or pursuant to any applicable federal law or regulation, or

(2) Which is listed as a radioactive material set forth in Title 10, Chapter 1, of the Code of Federal Regulations as maintained and updated by the Nuclear Regulatory Commission.

(i) "Hazardous waste" means hazardous or extremely hazardous waste as defined by Sections 25115 and 25117 of the Health and Safety Code and set forth in Title 22 of the California Administrative Code.

(j) "Handle" means to generate, treat, store, or dispose of a hazardous waste in any fashion.

(k) "MSDS" means Material Safety Data Sheet prepared pursuant to Section 6390 of the Labor Code.

(l) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, association, city, county or district.

(m) "Proprietary information" means information regarding compounds or ingredients used in a process or production which do not qualify as trade secrets but which provides an industry or business with a competitive advantage.

(n) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

(o) "Reproductive toxins" means a substance or agent which can affect reproductive functions causing birth defects, spontaneous abortions, impaired spermatogenesis, reduced fertility and/or intra-uterine growth retardation, and appears on the list of hazardous substances prepared by the Director of Industrial Relations pursuant to Section 6380 of the Labor Code.

(p) "Sensitive hazardous materials" means hazardous materials recognized by the Health Officer which if deliberately misused would present an imminent threat to public health and safety.

(q) "SIC Code" means the identification number assigned by the Standard Industrial Classification Code to specific types of businesses.

(r) "Use" includes the handling, processing, or

storage of a hazardous substance.

(s) "User" means any person who uses a hazardous substance or handles a hazardous waste.

SEC. 42.0904 REVIEW OF DESIGNATION AS HAZARDOUS MATERIALS, CARCINOGENS OR REPRODUCTIVE TOXINS

The Health Officer may add materials to, or exempt materials from the materials designated as hazardous materials, carcinogens or reproductive toxins upon authorization by the Board of Supervisors of the County of San Diego.

SEC. 42.0905 HAZARDOUS MATERIALS ADVISORY COMMITTEE

The Health Officer may seek advice from the County of San Diego Hazardous Materials Advisory Committee regarding the implementation of the provisions of this division including effective methods of public information and education.

SEC. 42.0906 FILING OF A HAZARDOUS SUBSTANCE DISCLOSURE FORM

(a) Based on SIC Codes and other similar classifications, the Health Officer shall identify establishments which are potential users of hazardous materials.

(b) Every person who owns or operates an establishment that is identified by the Health Officer as a potential user shall complete, within thirty (30) days of receipt from the Health Officer, a form requesting the following information:

- (1) Name,
- (2) Address,

(3) Type of business, and

(4) Whether the person uses or handles hazardous materials.

(c) Any person who uses or handles a hazardous material must annually submit a completed disclosure form to the Health Officer by September 1 of each year.

(d) Within thirty (30) days of any:

(1) Major change in the use of new hazardous materials in reportable quantities,

(2) Change of business address,

(3) Change of business ownership, or

(4) Change of business name,

the user shall submit a disclosure form detailing the new use or handling or other appropriate information.

#### SEC. 42.0907 MAINTENANCE OF FILES

(a) The Health Officer shall maintain files for at least thirty (30) years of all disclosure forms received and provide for a data bank of generic MSDS health and safety information. These files shall be open to the public for inspection and reproduction during normal business hours. The disclosure forms shall be filed by street address.

(b) Any person may request information regarding hazardous materials at an establishment from the Health Officer. In situations involving potential or actual exposures, the Health Officer shall within two

(2) working days of the person's request, examine the records of any establishment made available or submitted pursuant to Section 42.0908(c) of this division to obtain the information requested. The Health Officer shall release the information to the requesting person within five (5) working days of the person's request consistent with the requirements of Section 42.0912 of this division. In the event of a medical emergency, the Health Officer shall take all measures necessary to obtain the information immediately.

(c) In situations involving non-imminent public health concerns, or requests for large amounts of information, the Health Officer shall provide the information within a reasonable period of time, given the nature and extent of the request. The Health Officer may collect fees to recover costs for providing information under this subsection.

SEC. 42.0908 CONTENT OF DISCLOSURE FORM

(a) The disclosure form shall be prepared by the Health Officer with the assistance, if necessary, of the Fire Department, the Planning Department, and other interested parties. The disclosure form shall include requests for the following:

(1) A listing of the chemical name or any common name of each carcinogen or reproductive toxin used by the person completing the disclosure form.



(2) A listing of the chemical name, or common names of every hazardous substance used by the person completing the disclosure form.

(3) A listing of every hazardous waste handled by the person completing the disclosure form.

(4) The maximum amount of each and every hazardous material disclosed in subsections (1), (2) and (3) which is stored at any one time by the user over the course of the year. Quantities are to be reported within specified ranges.

(5) An indication that the user possesses appropriate discharge permits for any intentional releases of the hazardous materials disclosed in subsections (1), (2) and (3) into the air, water, sewers, or land to enable the community to understand the sources, quantity and content of hazardous material releases.

(b) The Health Officer may accept forms required by state or federal law in lieu of portions of the disclosure form specified in this section provided that such state or federal forms contain equivalent information.

(c) Any person who is required to maintain and make available an MSDS pursuant to California Administrative Code, Title 8, Section 5194 shall make such document available to the Health Officer upon request within two (2) working days.

(d) Upon request, all users must provide information beyond that specifically requested in the disclosure form to the Health Officer, if the Health Officer determines that such information is necessary to protect health and safety or the environment. Such additional information shall be subject to the trade secret provisions of Section 42.0912.

SEC. 42.0909 EMERGENCY RESPONSE INFORMATION

(a) Each establishment shall provide the Health Officer with a list of names, addresses, and phone numbers (office and home) of all persons qualified and authorized to act as an emergency contact.

(b) When necessary, the Health Officer may request additional information on how and where hazardous materials are stored, for the purpose of distribution to fire departments and other emergency response teams that may be called upon to provide emergency services in connection with the handling and use of hazardous materials.

(c) All emergency response information submitted or made available to the Health Officer pursuant to this section, shall be kept confidential and shall not be disclosed to the public unless required by compelling circumstances constituting an imminent danger to public health. The Council hereby finds and declares that this information, were it accessible to the general public, may be potentially used to sabotage, destroy, or otherwise damage industrial

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facilities. The Council further declares pursuant to Government Code Section 6255, that the public interest served by not making such information public, clearly outweighs the public interest served by disclosure of such information.

SEC. 42.0910 EXEMPTIONS TO DISCLOSURE

(a) A substance designated as a hazardous substance by this division solely by its presence on the Nuclear Regulatory Commission list of radioactive materials, shall be exempt from the requirement that these materials be listed on the disclosure form.

(b) Hazardous substances contained only in consumer products packaged for distribution to, and used by, the general public shall be exempt from disclosure under this division.

(c) Any person using or handling a hazardous material in amounts not exceeding 500 pounds or 55 gallons, whichever is the lesser, in any month in one location, shall be exempted from the requirement of disclosure of that use or handling unless the Health Officer upon approval by the Council has provided notice that he or she has changed the weight or volume limits of this exemption for a specific class of acutely or extremely hazardous materials in response to public health concerns. This exemption shall not apply to laboratories involved in chemical synthesis and production. Known carcinogens or reproductive

toxins of any quantity shall not be exempted pursuant to this subsection unless used or intended to be used for medical or therapeutic purposes.

SEC. 42.0911 PENALTY FOR VIOLATIONS - MISDEMEANOR

(a) Any person who, upon receiving written notice from the Health Officer, fails to comply with the provisions of Section 42.0906 is guilty of a misdemeanor. Each day on which a failure to file occurs shall be considered a separate violation.

(b) Such person may also be civilly liable for injuries to persons or property caused by the failure to comply with Section 42.0906.

SEC. 42.0912 CONFIDENTIALITY

(a) If a user believes that a request for information made by either the disclosure form or pursuant to subdivision (c) and (d) of Section 42.0908 involves the release of a trade secret, the user shall stamp, mark or designate the information as a trade secret and shall submit the information requested to the Health Officer.

(b) The Health Officer shall protect from disclosure any and all trade secrets coming into his or her possession, as defined in subsection (d) of Section 6254.7 of the Government Code and Section 1060 of the Evidence Code, when requested in writing by the user.

(c) Any information reported to or otherwise obtained by the Health Officer, or any of his

representatives or employees, which is exempt from disclosure pursuant to subdivision (b), shall not be disclosed to anyone except an officer or employee of the City, the County, the State of California, or the United States of America, 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, the County or medical service providers and their employees, if in the opinion of the Health Officer such disclosure is necessary for the satisfactory performance of their duties.

(d) For the purposes of this section, fire and emergency response personnel and County health personnel operating within the jurisdiction of the City shall be considered employees of the City.

(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 official or in accordance with the laws of the United States.

(f) (1) The Health Officer upon his or her own initiative or upon receipt of a request for the release of information designated as a trade secret by a user, shall determine whether any or all of the information so submitted is properly designated as a trade secret.

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(2) If the Health Officer determines that the information is not a trade secret, the Health Officer shall notify the user by certified mail.

(3) The user shall have fifteen (15) days after receipt of notification to provide the Health Officer with a complete justification and statement of the grounds on which the trade secret privilege is claimed. This justification and statement shall be submitted by certified mail.

(4) The Health Officer shall determine whether such information is protected as a trade secret within fifteen (15) days after receipt of the justification and statement or, if no justification and statement is submitted, within thirty (30) days of the original notice. The Health Officer shall notify the user and any party who has requested the information of that determination. The final notice shall also specify a date, not sooner than fifteen (15) days after the date of mailing of the final notice, when the information shall be made available to the public.

(5) Prior to the date specified in the final notice, a user may institute an action in an appropriate superior court for a declaratory judgment as to whether such information is subject to protection under subdivision (a) and the information shall not be disclosed pending final judgment in such action.

(g) The provisions of this section shall not permit a user to refuse to disclose information required pursuant to this division to the Health Officer.

(h) A user may designate, when appropriate, information made available to the Health Officer by either the disclosure form or pursuant to subdivisions (c) and (d) of Section 42.0908 as proprietary information or as information regarding sensitive hazardous materials. The Health Officer will disclose this information only to health care providers or other individuals, including but not limited to neighborhood residents, after the Health Officer determines that this information is needed for legitimate health concerns.

(i) In situations involving extremely sensitive materials, such as national defense work, which are normally protected by elaborate security systems, the Health Officer may issue a variance to omit the listing of certain hazardous substances from the disclosure form to protect such information from inadvertent disclosure, provided that the user satisfies the following requirements:

(1) The user must demonstrate to the satisfaction of the Health Officer that there is the potential for misuse if the hazardous substances or information regarding them are obtained by the public.

(2) The user must indicate on the appropriate place on the disclosure form that a hazardous substance is being omitted from the form.

(3) The user must provide the following information from the MSDS for each hazardous substance omitted: fire and explosive hazard data, health hazard data, reactivity data, spill or leak procedures, special protection information, and special precautions.

(4) The user must agree to an inspection of all facilities by the Health Officer to insure that all hazardous materials are being handled in a safe manner.

(5) The user must make provisions to allow for immediate independent 24-hour access to the hazardous materials records of the establishment by the Health Officer.

(6) The user must establish to the Health Officer's satisfaction that an emergency coordinator will be available on a 24-hour basis to supply information on hazardous materials at the establishment to the Health Officer.

(7) The user must keep at least one listing of hazardous substances omitted from the disclosure form at a separate location from the establishment.

(8) The user may be required to pay a



higher permit fee to cover the extra costs of additional inspections and administrative procedures required by the above requirements.

(j) Any officer or employee of the City, or former officer or employee, who by virtue of such employment or official position has obtained possession of or has access to material the disclosure of which is prohibited by this section, and who knowing that disclosure of the material is prohibited, knowingly and willfully discloses the material in any manner to any person known not to be entitled to receive it, shall be guilty of a misdemeanor. Any contractor with the City and any employee of such contractor, who has been furnished information as authorized by this section, shall be considered to be an employee of the City for purposes of this section.

(k) The Council finds and declares, pursuant to the Government Code Section 6255, that the public interest served by not making information regarding trade secrets, proprietary information, and sensitive hazardous materials public clearly outweighs the public interest served by disclosure of such information to members of the general public, except as provided by this section.

SEC. 42.0913 FEES

Every person applying for a permit under the provisions of this division shall at the time of making application for such permit pay a fee, the

exact amount which shall be determined by the County of San Diego and kept on record by the County Department of Health Services and on file in the City Clerk's Composite Rate Book. The schedule of fees shall include provisions for collection of annual renewal fees and collection of delinquency fees.

SEC. 42.0914 ENFORCEMENT OFFICER - AUTHORITY -  
INSPECTION

The Health Officer is authorized and empowered to enforce the provisions of this division and to inspect such activities as are regulated in this division for the purpose of determining compliance with this division. No person shall obstruct or interfere with the Health Officer in his performance of these duties. The Health Officer shall be empowered to make such arrests and issue citations pursuant to Penal Code Sections 836.5 and 853.7 for violations of this division.

SEC. 42.0915 SEVERABILITY

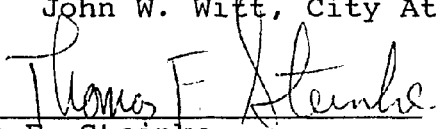
If any section, subsection, sentence, clause, or phrase of this division is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the division. The Council hereby declares that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

any portion of this division would be subsequently  
declared invalid or unconstitutional.

Section 2. This ordinance shall take effect and be in  
force on the thirtieth day from and after its passage.

APPROVED: John W. Witt, City Attorney

By

  
Thomas F. Steinke  
Deputy City Attorney

TFS:ta:210  
4/18/83  
O-83-216  
Or.Dept:PS&S  
Form=r.none

Passed and adopted by the Council of The City of San Diego on MAY 9 1983,  
 by the following vote:

| Councilmen      | Yeas                                | Nays                     | Not Present              | Ineligible               |
|-----------------|-------------------------------------|--------------------------|--------------------------|--------------------------|
| Bill Mitchell   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Bill Cleator    | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Gloria McColl   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| William Jones   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Ed Struikma     | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Mike Gotch      | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Dick Murphy     | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Uvaldo Martinez | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Mayor           | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

VACANT

AUTHENTICATED BY: BILL CLEATOR  
 Deputy Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR  
 City Clerk of The City of San Diego, California.

(Seal)

By June A. Blackwell, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on APR 25 1983, and on MAY 9 1983.

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR  
 City Clerk of The City of San Diego, California.

(Seal)

By June A. Blackwell, Deputy.

|   |                           |
|---|---------------------------|
| Office of the City Clerk, San Diego, California |                           |
| Ordinance Number <u>0-15964</u>                 | Adopted <u>MAY 9 1983</u> |

CERTIFICATE OF PUBLICATION

CITY OF SAN DIEGO  
202 C St., TWELFTH FLOOR  
San Diego, CA 92101

IN THE MATTER OF

NO.

ORDINANCE NUMBER O-15964

**ORDINANCE NUMBER O-15964**  
**(New Series)**  
AN ORDINANCE AMENDING CHAPTER IV, ARTICLE 2,  
OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVI-  
SION 9, SECTIONS 42.0901 THROUGH 42.0915, RELATING  
TO DISCLOSURE OF HAZARDOUS MATERIALS.  
This ordinance imposes a permit requirement for  
establishments which use hazardous substances or handle hazar-  
dous wastes, as defined. Each such establishment is also required  
to provide to the Health Officer, specific information about the  
hazardous materials on a disclosure form. All nonconfidential infor-  
mation contained on the disclosure form will then be made  
available to members of the public.  
A complete copy of the ordinance is available for inspection in  
the Office of the City Clerk of the City of San Diego, 12th Floor, Ci-  
ty Administration Building, 202 "C" Street, San Diego, CA 92101.  
Introduced on APR 25 1983.  
Passed and adopted by the Council of The City of San Diego  
on MAY 9 1983.  
AUTHENTICATED BY:  
BILL CLEATOR Deputy Mayor of The City  
of San Diego, California.  
CHARLES G. ABDELNOUR, City Clerk of The City  
of San Diego, Ca.  
SEAL)  
By JUNE A. BLACKNELL, Deputy.  
Publish May 23, 1983. 60-5453

I, Charlene Land, am a citizen  
of the United States and a resident of the County aforesaid; I am over the  
age of eighteen years, and not a party to or interested in the above-entitled  
matter. I am the principal clerk of the San Diego Daily Transcript, a  
newspaper of general circulation, printed and published daily, except  
Saturdays and Sundays, in the City of San Diego, County of San Diego, and  
which newspaper has been adjudged a newspaper of general circulation by  
the Superior Court of the County of San Diego, State of California, under  
the date of January 23, 1909, Decree No. 14894; and the

ORDINANCE NUMBER O-15964  
(New Series)

is a true and correct copy of which the annexed is a printed copy and was  
published in said newspaper on the following date(s), to wit:

May 23, 1983

I certify under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California this 23rd day of May, 1983.

*Charlene Land*

(Signature)

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