



CITY OF
HAYWARD
HEART OF THE BAY

CITY COUNCIL AGENDA
DECEMBER 3, 2013

MAYOR MICHAEL SWEENEY
MAYOR PRO TEMPORE MARK SALINAS
COUNCIL MEMBER BARBARA HALLIDAY
COUNCIL MEMBER FRANCISCO ZERMEÑO
COUNCIL MEMBER MARVIN PEIXOTO
COUNCIL MEMBER GREG JONES
COUNCIL MEMBER AL MENDALL

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CITY OF
HAYWARD
HEART OF THE BAY

CITY COUNCIL MEETING FOR DECEMBER 3, 2013
777 B STREET, HAYWARD, CA 94541
WWW.HAYWARD-CA.GOV

CLOSED SESSION
Closed Session Room 2B – 5:30 PM

1. **PUBLIC COMMENTS**
 2. Conference with Labor Negotiators
Pursuant to Government Code 54957.6
 - Lead Negotiators: City Manager David; City Attorney Lawson; Assistant City Manager McAdoo; Human Resources Director Robustelli; Finance Director Vesely; Deputy City Attorney Vashi; Director of Maintenance Services McGrath; Human Resources Analyst II Collins; Human Resources Analyst Monnastes; Jack Hughes, Liebert, Cassidy and WhitmoreUnder Negotiation: All Groups
 3. Adjourn to City Council Meeting
-

CITY COUNCIL MEETING
Council Chambers – 7:00 PM

CALL TO ORDER Pledge of Allegiance Mayor Sweeney

ROLL CALL

CLOSED SESSION ANNOUNCEMENT

PUBLIC COMMENTS

The Public Comment section provides an opportunity to address the City Council on items not listed on the agenda or Work Session, or Informational Staff Presentation items. The Council welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits, and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Council is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff.

ACTION ITEMS: *(The Council will permit comment as each item is called for the Consent Calendar, Public Hearings, and Legislative Business. In the case of the Consent Calendar, a specific item will need to be pulled by a Council Member in order for the Council to discuss the item or to permit public comment on the item. Please notify the City Clerk any time before the Consent Calendar is voted on by Council if you wish to speak on a Consent Item.)*

CONSENT

1. Approval of Minutes of the Special City Council Meeting on November 12, 2013
[Draft Minutes](#)
 2. Resolution to Authorize Emergency Solutions Grants (ESG) Program 2013-14 Application
[Staff Report](#)
[Attachment I Resolution](#)
 3. Adoption of Ordinance Amending Hayward Municipal Code Sections 10-1.1315(a) and 10-1.1320(a) to Allow Health Clubs and Kennels as Permitted Uses in the Central Business (CB) Zoning District
[Staff Report](#)
[Attachment I Summary of Ordinance](#)
-

The following order of business applies to items considered as part of Public Hearings and Legislative Business:

- *Disclosures*
 - *Staff Presentation*
 - *City Council Questions*
 - *Public Input*
 - *Council Discussion and Action*
-

PUBLIC HEARING

4. Introduction of Ordinance Amending Chapter 11, Article 3, Appendix A of the Hayward Municipal Code Relating to Wastewater Discharge Regulations (Report from Director of Public Works - Utilities & Environmental Services Ameri)
[Staff Report](#)
[Attachment I Draft Ordinance](#)
[Attachment II Draft Ord with tracked changes](#)

LEGISLATIVE BUSINESS

5. Introduction of Ordinance to Amend Hayward Municipal Code Related to Surcharge for Water Customers Outside of the City (Report from Director of Public Works - Utilities and Environmental Services Ameri)
[Staff Report](#)
[Attachment I Draft Ordinance](#)
[Attachment II Draft Resolution](#)
6. Conditional Authorization of Issuance of Multi-Family Housing Revenue Bonds (Hayward Senior Housing Phase II aka B & Grand Affordable Senior Housing Project) 2013 Series A and Execution of Related Documents (Report from Assistant City Manager McAdoo)
[Staff Report](#)
[Attachment I Resolution](#)

December 3, 2013



COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Oral reports from Council Members on their activities, referrals to staff, and suggestions for future agenda items.

ADJOURNMENT

NEXT SPECIAL MEETING, TUESDAY, DECEMBER 10, 2013

PUBLIC COMMENT RULES: *The Mayor may, at the beginning of the hearing, limit testimony to three (3) minutes per individual and five (5) minutes per an individual representing a group of citizens or organization. Speakers will be asked for their name before speaking and are expected to honor the allotted time. Speaker Cards are available from the City Clerk at the meeting.*

PLEASE TAKE NOTICE *that if you file a lawsuit challenging any final decision on any public hearing or legislative business item listed in this agenda, the issues in the lawsuit may be limited to the issues that were raised at the City's public hearing or presented in writing to the City Clerk at or before the public hearing.*
PLEASE TAKE FURTHER NOTICE *that the City Council has adopted Resolution No. 87-181 C.S., which imposes the 90 day deadline set forth in Code of Civil Procedure section 1094.6 for filing of any lawsuit challenging final action on an agenda item which is subject to Code of Civil Procedure section 1094.5.*

*****Materials related to an item on the agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office, City Hall, 777 B Street, 4th Floor, Hayward, during normal business hours. An online version of this agenda and staff reports are available on the City's website. Written comments submitted to the Council in connection with agenda items will be posted on the City's website. All Council Meetings are broadcast simultaneously on the website and on Cable Channel 15, KHRT. *****

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 48 hours in advance of the meeting by contacting the City Clerk at (510) 583-4400 or TDD (510) 247-3340.

Please visit us on:





**MINUTES OF THE SPECIAL CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, November 12, 2013, 5:45 p.m.**

The Special Work Session meeting was called to order by Mayor Sweeney at 5:45 p.m., followed by the Pledge of Allegiance led by Council Member Jones.

ROLL CALL

Present: COUNCIL MEMBERS Zermeño, Jones, Halliday, Peixoto, Salinas,
Mendall
MAYOR Sweeney
Absent: None

PUBLIC COMMENTS

There were none.

SPECIAL WORK SESSION

1. Continued Discussion of Council Priorities for FY 2015 & FY 2016

Staff report submitted by City Manager David, dated November 12, 2013, was filed.

City Manager David provided a synopsis of the report noting there was a supplemental report which was distributed after the packet was published.

Discussion ensued among Council and City staff related to the Council's priority of SAFE. Council members offered the following suggestions: compile data that compares Hayward to other comparative cities or regions in the nation in order to have a context for measurement; consider metrics for crime prevention; embrace how the City measures performance; the "Safe Priorities At A Glance" should be short and focused document; remove Item No. 4 under the FY2014 Metrics for SAFE; continue community forums led by the police; and focus on outcomes. It was noted that the Council's priorities were the overriding priorities that would be discussed during upcoming meetings and operational goals would be discussed at a later time during the City's budget process.

Mayor Sweeney recommended placing the Council Priorities on the agenda under action items. Discussion ensued and there was the consensus of four Council members to place the Council Priorities for FY 2015 & FY 2016 on a future Council agenda under action items.

The Council adjourned to a Special City Council meeting at 6:48 p.m.

The Special City Council meeting was reconvened by Mayor Sweeney at 7:00 p.m., followed by the Pledge of Allegiance led by Council Member Jones.

ROLL CALL

Present: COUNCIL MEMBERS Zermeño, Jones, Halliday, Peixoto, Salinas,
Mendall
MAYOR Sweeney
Absent: None

CLOSED SESSION

Mayor Sweeney reported that the Council met with labor negotiators pursuant to Government Code 54957.6 regarding all groups; and met with property negotiators pursuant to Government Code 54956.8 regarding property transaction related to 22632 Main Street (APN 428-0066-024-00), 22654 Main Street (APN 428-0066-039-00), 22696 Main Street (APN 428-0066-038-02), 1026 C Street (APN 428-0066-037-00), and 1026 C Street (APN 428-0066-038-01); and there was no reportable action. #

PUBLIC COMMENTS

Mr. Kim Huggett, Hayward Chamber of Commerce President, announced the Hayward Chamber of Commerce monthly mixer on November 13, 2013, at Heald Business College, and noted that the Business Person, Hayward Police Officer, Firefighter and Educator of the Year would be named at the mixer.

Ms. Traci Cross, Project Director for the Hayward Coalition for Healthy Youth, alerted Council about vapor lounges in Hayward and requested a moratorium for them.

Mr. Jim Drake, Hayward resident, noted that Hayward ranked among the top ten Bay Area cities for car thefts per capita in the nation, according to a Contra Costa Times article dated June 26, 2013.

REGULAR WORK SESSION

2. Summary of Community-Wide and Municipal Energy Use and Efforts to Improve Efficiency

Staff report submitted by Environmental Services Manager Pearson, dated November 12, 2013, was filed.

Environmental Services Manager Pearson provided a synopsis of the report.

The Council acknowledged City staff and the Council Sustainability Committee for their efforts in encouraging energy efficiency throughout the community. Discussion ensued among Council and City staff, and Council offered the following suggestions: continue to offer energy efficiency incentives to increase resident participation and compliance; consider waiving permit fees for energy retrofit projects; encourage buying electric cars by offering rebates; continue to consider Community Choice Aggregation to reduce greenhouse gas emission; and continue to consider solar panel installations on City buildings' roofs.



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3. Report Regarding the Impact of the Patient Protection and Affordable Care Act to the City of Hayward

Staff report submitted by Acting Senior Human Resources Analyst Monnastes, dated November 12, 2013, was filed.

Human Resources Director Robustelli announced the report and introduced Acting Senior Human Resources Analyst Monnastes who provided a synopsis of the report.

Discussion ensued among the Council and City staff.

CONSENT

Consent Item No. 5 was removed for further discussion.

4. Approval of Minutes of the Special City Council Meeting on October 29, 2013
It was moved by Council Member Zermeño, seconded by Council Members Halliday and Mendall, and carried unanimously, to approve the minutes of the City Special Council Meeting on October 29, 2013.

5. Resolution Authorizing the City Manager to Negotiate and Execute a New Ground Lease Agreement with Meridian Aviation, Inc. for Lease of a Parcel of Land at Hayward Executive Airport

Staff report submitted by Airport Manager McNeeley, dated November 12, 2013, was filed.

Council Member Halliday, who is the Council Airport Committee Chair, noted that Meridian Aviation, Inc. was a privately-held aviation company that chose the Hayward Executive Airport among several airports to develop hangars; and she added that it would provide jobs for Hayward residents and it would bring more business to the airport.

It was moved by Council Member Halliday, seconded by Council Member Zermeño, and carried unanimously, to adopt the following, with an amendment to page 65 of the staff report, the last sentence under the bullet point for Phase 2, to read as follows: “This phase will be completed within nine years of the exercise of lease option.”

Resolution 13-167, “Resolution Authorizing the City Manager to Negotiate and Execute a Ground Lease with Meridian Aviation, Inc. for a Parcel of Land at Hayward Executive Airport”

PUBLIC HEARING

6. Related to City Council Action Taken on September 24, 2013, Proposed Revisions Related to Hayward's Alcoholic Beverage Outlet Regulations, Proposed New Regulations for Cabarets and Dances to Replace Hayward's Public Dance Provisions, and Related Amendments to Zoning Ordinance Definitions and the CC-C and CG Zoning Districts; Proposed New Fees - (Text Amendment Application No. PL-2013-0175 TA); Adoption of Negative Declaration; Applicant: City of Hayward

Staff report submitted by Development Services Director Rizk and Chief of Police Urban, dated November 12, 2013, was filed.

Development Services Director Rizk acknowledged the assistance of Lieutenant Martinez and Assistant City Attorney Conneely with the report and provided a synopsis of the report. Mr. Rizk disclosed that the Council was in receipt of letters in support of the proposed staff recommendation and one letter from the California Restaurant Association which opposed the \$280 annual fee for full-service restaurants and requested a warning system prior to the issuance of administrative citations and fines.

Discussion ensued among Council and City staff and Council offered the following suggestions as incentives for businesses: consider making reports of violations and citations associated with non-compliant establishments available to the public; establish a report card that can be posted at establishments; or develop a certificate that indicates that the business passed all its inspections.

Mayor Sweeney opened the public hearing at 8:29 p.m.

Mr. Richard Ersted, Hayward property owner, expressed support for the proposed regulations and urged Council to approve them.

Mr. Kim Huggett, President of the Hayward Chamber of Commerce, noted the Chamber concurred with the California Restaurant Association in opposing the annual alcohol beverage outlet fee of \$280 for full-service restaurant operators and recommending that establishments be provided with a warning for the first offense.

Mr. James Marrable, Hayward resident, expressed support for the proposed alcoholic beverage outlets regulations.

Mr. Darren Guillaume, Hayward business owner, noted the proposed fees represented a hardship for business owners and concurred with a grading system in lieu of fines.

Ms. Kiana Capelli submitted a card but did not speak.

Mr. Aric Yeverino, owner of the Dirty Bird Lounge, shared a report card that the police department had prepared for the Lounge, which showed that his establishment was in compliance.



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING
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Ms. Tiffany Neira, Hayward resident and member of the Hayward Coalition for Healthy Youth, urged Council's support for the proposed alcohol outlet regulations.

Ms. Linda Pratt, Program Director at CommPre, urged the Council to support critical incident fees noting that CommPre had documented the high cost of incidents that occurred at certain establishments, and added that the proposed regulations would help non-compliant establishments improve their business practice.

Mayor Sweeney closed the public hearing at 8:45 p.m.

Council Member Mendall offered a motion per staff recommendation noting the proposed ordinance would enable the City to go after non-compliant establishments that were over utilizing City resources and would help turn around problem establishments into conforming businesses.

Council Member Halliday seconded the motion noting that non-compliant establishments negatively affected the city and the new regulations would help deter problems. Ms. Halliday added that the Council would be able to assess the effectiveness of the regulations on an annual basis.

Council Member Salinas offered a friendly amendment directing staff to develop a grading system for alcoholic beverage outlets as part of the ordinance's annual review. Mr. Salinas hoped that the proposed regulations would help improve non-compliant establishments.

Council Members Mendall and Halliday were amenable to the friendly amendment.

Council Member Jones favored the proposed ordinance because it met Council's policy goals, but was concerned about the fees. Mr. Jones requested that, as part of the annual review, staff recommend a creative approach to pay for the services. He added that he would be willing to support a General Fund subsidy.

Council Member Zermeño noted he supported the preventive aspect of the proposed ordinance, but did not agree to charge small businesses during a difficult economic time. Mr. Zermeño indicated he would be supportive of funding the services through the General Fund and added that the City had regulations in place to successfully shutdown problem-establishments.

Council Member Peixoto expressed support for the motion noting that the ordinance addressed problematic bars that created a detriment for businesses and noted that the Council's action was consistent with the Council's priorities. Mr. Peixoto was amenable to entertain having the services subsidized through the General Fund.

Mayor Sweeney noted he would support the motion and indicated that overall there were good mechanisms in place to help with non-compliant establishments.

It was moved by Council Member Mendall, seconded by Council Member Halliday, and carried by the following roll call vote to adopt the following with direction to staff to develop a grading system for alcoholic beverage outlets and present it to Council as part of the annual report regarding the implementation of the new provisions.

AYES: Council Members Jones, Halliday, Peixoto, Salinas, Mendall
MAYOR Sweeney
NOES: Council Member Zermeño
ABSENT: None
ABSTAINED: None

Introduction of Ordinance 13-_, “Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code Relating to Alcoholic Beverage Outlets”

Introduction of Ordinance 13-_, “Ordinance Amending Hayward Municipal Code Section 10-1.3500, Zoning Ordinance Definitions, to Conform to the City’s Alcoholic Beverage Outlets Ordinance”

Introduction of Ordinance 13-_, “Ordinance Amending Hayward Municipal Code Sections 10-1.1520 Et Seq. and 10-1.1000 Et Seq., Regulating the City’s Central City Commercial (CC-C) Subdistrict and General Commercial (CG) District, to Implement the Alcoholic Beverage Outlets Ordinance”

Introduction of Ordinance 13-_, “Ordinance Amending Chapter 6, Article 2 of the Hayward Municipal Code Relating to Cabarets and Dances”

Resolution 13-168, “Resolution Approving Negative Declaration and Adopting Findings Supporting Text Amendments Related to Proposed, New Alcoholic Beverage Outlets Ordinance and Cabarets and Dances Ordinance”

Resolution 13-169, “Resolution Amending the City of Hayward Fiscal Year 2014 Master Fee Schedule Associated with Revisions to Alcoholic Beverage Outlets Ordinance and Cabarets and Dances”

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Peixoto announced there was a new Italian restaurant in downtown Hayward called Acqua e’ Farina and urged everyone to patronize it.

Council Member Halliday reported that she attended a League Leaders Conference hosted by the League of California Cities in which the League Board of Directors adopted the goals for the year which involved: developing new tools for economic development; continuing pension and other



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Tuesday, November 12, 2013, 5:45 p.m.**

post-employment benefits reform; and strengthening partnerships with policy-makers.

ADJOURNMENT

Mayor Sweeney adjourned the meeting at 9:06 p.m.

APPROVED:

Michael Sweeney
Mayor, City of Hayward

ATTEST:

Miriam Lens
City Clerk, City of Hayward

DATE: December 3, 2013
TO: Mayor and City Council
FROM: Director of Library & Community Services
SUBJECT: Resolution to Authorize Emergency Solutions Grants (ESG) Program 2013-2014 Application

RECOMMENDATION

That City Council adopts the attached resolution authorizing the City Manager to apply for, and if granted, to accept and execute an Emergency Solutions Grants agreement.

BACKGROUND

The Emergency Solutions Grant (ESG) is a program of the U.S. Department of Housing and Urban Development (HUD) that provides funding to states and local governments for emergency services and housing support for homeless and at-risk households. HUD has allocated a total of \$8,419,262 to the State of California Department of Housing and Community Development (HCD) to administer and execute local grants statewide in 2013-2014. The amount of available funding per applicant is \$168,385.

In 2009, the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act was enacted, revising the existing Federal Emergency Shelter Grants (FESG) Program into the Emergency Solutions Grant, now known as ESG.

In 2010, the US Interagency Council on Homelessness published *Opening Doors*, a national [comprehensive strategic plan](#) to prevent and end homelessness. In this strategic plan, rapid rehousing is identified as a best practice and recommended strategy. During this 2013-2014 funding cycle, HCD has aligned with the federal strategic plan, and has set aside thirty percent of available ESG funds specifically for rapid rehousing programs.

DISCUSSION

Organizations that are eligible to apply for ESG 2013-2014 funds include units of general purpose local government in select HUD eligible counties, local jurisdictions, and private non-profit organizations located within those jurisdictions. The City of Hayward and all local homeless service providers in its jurisdiction are eligible applicants.

City staff is working in coordination with local providers to maximize the amount of ESG funding and resources available to Hayward and its residents. To this end, local shelter providers (FESCO and ESP) are preparing to submit separate applications for ESG funds to support their

emergency shelter operations and services in Hayward. These two emergency shelters were successful in the last 2012-2013 ESG funding process, to which they separately applied with support from the City of Hayward.

If authorized by Council, the City of Hayward will submit a City application for ESG funding to support rapid rehousing services in partnership with Abode Services. Abode Services is a long-time rapid rehousing service provider in Hayward, with strong connections to permanent supportive housing units and proven experience managing federal (HUD) grants and the stringent reporting requirements they entail.

Should Council authorize it, this application would be a continuation of ongoing collaborative efforts to address the issue of homelessness on a regional scale, in alignment with the Alameda County-Wide Homeless and Special Needs Housing Plan, also known as the Everyone Home Plan, which was adopted by Council December 5, 2006. Because of the eligibility criteria set forth by HCD and HUD, the ESG program funds, if awarded, would directly support existing emergency shelters and rapid rehousing programs in Hayward. However, because of the eligibility criteria, the ESG program funds would not significantly overlap with or support the planning process proposed by South Hayward Parish to develop a centralized service center. City staff will continue to work with South Hayward Parish and other community partners on that effort, as reported to Council in October.

Because emergency shelter and rapid rehousing applications are considered in separate categories by HCD, the City of Hayward would not be in competition with the emergency shelter providers for these funds.

The attached resolution is provided in the format requested by HCD. If adopted by Council, it would authorize the City Manager to apply for and receive ESG funding from HCD.

FISCAL IMPACT

Should Council authorize the City Manager to apply for ESG funding, the City could potentially receive up to \$168,385 to support the City's long-term efforts to end chronic homelessness in Hayward. The ESG Program allows a portion of awarded funds to be used for grant administration by City staff, so administration of the grant would have no direct impact on the City's General Fund.

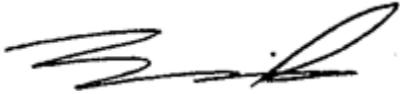
PUBLIC CONTACT

City staff has met with individual emergency shelter and rapid rehousing service providers to discuss the City's long-term strategies to end homelessness, as well as available funding opportunities including the ESG Notice of Funding Availability (NOFA). Additionally, staff announced and discussed the ESG NOFA and application process at the November 20, 2013 Community Services Commission regular public meeting.

Prepared by: Grace Kong, Administrative Analyst I

Recommended by: Sean Reinhart, Director of Library & Community Services

Approved by:



Fran David, City Manager

Attachment I: Resolution to Authorize Emergency Solutions Grant (ESG) Program 2013-2014
Application

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY OF HAYWARD TO APPLY FOR AND RECEIVE EMERGENCY SOLUTIONS GRANT (ESG) PROGRAM FUNDING

WHEREAS, the State of California, Department of Housing and Community Development, Division of Financial Assistance, issued a Notice of Funding Availability under the Federal Emergency Solutions Grants (ESG) Program; and

WHEREAS, the City of Hayward is a Private Non-Profit Corporation or a Unit of General Purpose Local Government that is eligible and wishes to apply for and receive an ESG grant; and

WHEREAS, if the City of Hayward receives a grant from HCD, it certifies that all uses of the funds will be in compliance with the ESG Regulations and Contract.

NOW, THEREFORE, BE IT RESOLVED that City Council of the City of Hayward hereby authorizes Fran David, City Manager, to execute all required certifications, apply for and accept the Federal Emergency Solutions Grant in the amount of not more than \$168,385, in partnership with Abode Services, and to sign the Standard Agreement, any subsequent amendments thereto, and, where applicable, any ESG loan documents with HCD of not more than \$168,385, as well as perform any and all responsibilities in relationship to such contract.

IN COUNCIL, HAYWARD, CALIFORNIA December 03, 2013

ADOPTED BY THE FOLLOWING VOTE:

AYES COUNCIL MEMBERS:

NOES COUNCIL MEMBERS:

ABSTAIN COUNCIL MEMBERS:

ABSENT COUNCIL MEMBERS:

MAYOR: Sweeney

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DATE: December 3, 2013

TO: Mayor and City Council

FROM: City Clerk

SUBJECT: Adoption of an Ordinance Amending Hayward Municipal Code Sections 10-1.1315(a) and 10-1.1320(a) to Allow Health Clubs and Kennels as Permitted Uses in the Central Business (CB) Zoning District

RECOMMENDATION

That the City Council adopts the Ordinance introduced on November 19, 2013.

BACKGROUND

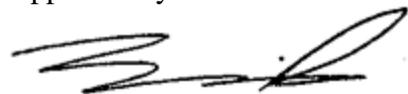
The Ordinance was introduced by Council Member Zermeño at the November 19, 2013, meeting of the City Council with the following vote:

AYES:	Council Members:	Zermeño, Jones, Halliday, Peixoto, Salinas, Mendall
	Mayor:	Sweeney
NOES:	Council Members:	None
ABSENT:	Council Members:	None
ABSTAIN:	Council Members:	None

The summary of the Ordinance was published in the Hayward Daily Review on Saturday, November 30, 2013. Adoption at this time is therefore appropriate.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Fran David, City Manager

Attachments:

Attachment I Summary of Ordinance Published on 11/30/13

**PUBLIC NOTICE OF AN INTRODUCTION OF ORDINANCE
BY THE CITY COUNCIL OF THE CITY OF HAYWARD**

AN ORDINANCE AMENDING HAYWARD MUNICIPAL CODE SECTIONS 10-1.1315(a) AND 10-1.1320(a) TO ALLOW HEALTH CLUBS AND KENNELS AS PERMITTED USES IN THE CENTRAL BUSINESS (CB) ZONING DISTRICT

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN THE AS FOLLOWS:

Section 1. Hayward Municipal Code Chapter 10, Section 10-1.1315(a), Primary Uses, and Section 10-1.1320(a), Administrative Uses, are hereby amended to add health clubs and kennels as permitted uses in the Central Business (CB) zoning district and to read in full as follows:

SEC. 10-1.1315 USES PERMITTED

SEC. 10-1.1320 CONDITIONALLY PERMITTED USES

Section 2. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional invalid or beyond the authority of the City such decision shall not affect the validity of the remainder of this ordinance which shall continue in full force and effect provided that the remainder of the ordinance absent the unexcised portion can be reasonably interpreted to give effect to the intentions of the City Council.

Section 3. Effective Date. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective immediately upon adoption.

Introduced at the meeting of the Hayward City Council held November 19, 2013, the above-entitled Ordinance was introduced by Council Member Zermeño.

This Ordinance will be considered for adoption at the regular meeting of the Hayward City Council, to be held on December 3, 2013, at 7:00 p.m., in the Council Chambers, 777 B Street, Hayward, California. The full text of this Ordinance is available for examination by the public in the Office of the City Clerk.

Dated: November 30, 2013
Miriam Lens, City Clerk
City of Hayward

DATE: December 3, 2013

TO: Mayor and City Council

FROM: Director of Public Works – Utilities & Environmental Services

SUBJECT: Introduction of Ordinance Amending Chapter 11, Article 3, Appendix A of the Hayward Municipal Code Relating to Wastewater Discharge Regulations

RECOMMENDATION

That Council introduces an ordinance to adopt revised Wastewater Discharge Regulations prepared in accordance with the requirements and recommendations listed in the Pretreatment Compliance Audit report completed by the San Francisco Bay Regional Water Quality Control Board and in accordance with the National Pretreatment Streamlining Rule.

BACKGROUND

The City of Hayward is a member of the East Bay Dischargers Authority (EBDA), a Joint Powers Agency consisting of five agencies with wastewater treatment facilities that collectively discharge treated effluent to a common outfall in the San Francisco Bay. The San Francisco Bay Regional Water Quality Control Board (RWQCB) has issued a National Pollutant Discharge Elimination System (NPDES) permit to EBDA allowing discharge of effluent into San Francisco Bay.

The City is required to have a pretreatment program to manage pollution prevention practices as described in the NPDES permit and Code of Federal Regulations (CFR), specifically for discharges entering the sanitary sewer. The purpose of a pretreatment program is to prevent damage to the biological processes of the City's Water Pollution Control Facility (WPCF) and reduce contaminated discharges from entering the San Francisco Bay. The core of the City's program, managed by the City's Water Pollution Source Control (WPSC) program, requires permitted industrial and commercial dischargers to pretreat their wastewater and use appropriate management practices to control harmful pollutants from entering the sanitary sewers.

In October 2005, the Environmental Protection Agency (EPA) created the Pretreatment Streamlining Rule (Rule) to reduce the overall regulatory burden on both the dischargers and pretreatment programs without adversely affecting the environment. The Rule simplifies the process for pretreatment permits and eliminates the need to sample discharges proven not to contain certain pollutants. This change substantially reduced costs to facilities, while still holding those facilities to the same federal discharge limits currently in place under the Clean Water Act regulations. The Rule updated the National Pretreatment Program that has been in place for more than thirty years.

The City's WPSC program must comply with the changes promulgated by the Rule and modify the City's Wastewater Discharge Regulations (WDR), accordingly. Changes were previously made in City of Hayward procedures and practice and now the WDRs are being formally revised to reflect those procedures and practices.

From time to time, the RWQCB conducts comprehensive audits of pretreatment programs to assess compliance with the federal NPDES permit program and CFR regulations that protect waterways from point source discharges such as sanitary effluent. Through its consultant, Tetra Tech, the RWQCB performed such an audit of the City's pretreatment program on January 25 and 26, 2012. The City received Tetra Tech's findings in a Pretreatment Compliance Audit (Audit) report in a letter dated December 3, 2012. The Audit required and recommended certain actions to improve the City's WPSC pretreatment program. Seven (7) of the thirty (30) actions identified in the report require a modification or clarification of the City's WDR.

DISCUSSION

The Audit's findings, in relation to the WDR, were mostly word changes and/or additions to clarify the City's WPSC program practices to better explain our enforcement actions and pretreatment requirements for the permitted businesses. These changes do not reflect any prior violations of the WPSC program; they are simply clarifications to the program. The Audit required the following modifications and clarifications to the WDR:

- Accurately cite the CFR
- Specify timelines for compliance schedules
- Include a prohibition clause for pollutants that could cause corrosive structural damage to the WPCF
- Revise statements not allowing less stringent regulatory standards and schedules than federal requirements
- Include clear legal authority to implement all enforcement actions outlined in the Enforcement Response Plan (ERP)
- Include the authority to annually publish a list of dischargers in significant noncompliance with the WDR
- Include a full definition of a Best Management Practice (BMP) as defined in the federal regulations

In addition to changes to the WDR, the Audit identified modifications that would strengthen the City's Enforcement Response Plan (ERP), an internal document used to ensure that violations are addressed consistently and effectively. The recommendations are intended to clarify the City's enforcement protocols and ensure that the City has sufficient authority to maintain compliance.

In May 2013, the City engaged RMC Water and Environment, a private consulting firm, to assist WPSC staff with revising the WDR and ERP in accordance with the Audit findings listed above and the Rule. WPSC staff informed the RWQCB of the changes made to the WDR and clarified the sampling frequency in the ERP, as required in the Audit mentioned above. Staff received no comments from RWQCB staff during the mandatory 45-day review comment period. Therefore, the City is allowed to implement the changes to both the WDR and ERP pursuant to the Federal protocol for pretreatment program changes.

ECONOMIC IMPACT

Adoption of the Revised WDR will result in minor economic impact on some Hayward businesses. The ordinance revisions will not significantly change day-to-day practices of WPSC staff work and will not result in changes noticeable by businesses already regulated by the program.

FISCAL IMPACT

There will be no additional cost to the City as a result of the changes proposed in the WDR. The majority of the changes to the WDR will not result in substantial changes to staff operations or procedures.

PUBLIC CONTACT

Given that the proposed changes to the WDR ordinance will not result in significant changes to the WPSC program or the businesses regulated by the WPSC, staff did not solicit feedback from regulated businesses. A public notice was published in the *Daily Review* ten (10) days prior to the Council meeting, and another public notice will be published three (3) days prior to the Council's adoption of the ordinance.

NEXT STEPS

If the attached ordinance is introduced, staff will return to Council for adoption at an upcoming meeting. The ordinance will become effective thirty (30) days after adoption. Once the ordinance is adopted, WPSC staff will implement the minor changes in the WDR in day to day pretreatment duties.

Prepared by: Elisa Wilfong, Water Pollution Control Administrator

Recommended by: Alex Ameri, Director of Public Works – Utilities & Environmental Services

Approved by:



Fran David, City Manager

Attachments:

- Attachment I – Draft Ordinance: Revised Wastewater Discharge Regulations (clean copy)
- Attachment II – Draft Ordinance: Revised Wastewater Discharge Regulations (with tracked changes)

ORDINANCE NO. 13-_____

AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 3,
APPENDIX “A” OF THE HAYWARD MUNICIPAL CODE BY
ADOPTING THE REVISED WASTEWATER DISCHARGE
REGULATIONS

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HAYWARD
DOES ORDAIN AS FOLLOWS:

Section 1. Upon the effective date of this ordinance, Chapter 11, Article 3, Appendix
“A” of the Hayward Municipal Code is hereby amended by adopting the revised Wastewater
Discharge Regulations to read in full as follows:

“ARTICLE 3

APPENDIX “A”

WASTEWATER DISCHARGE REGULATIONS
OF
THE CITY OF HAYWARD

Chapter 1

GENERAL PROVISIONS

1.01 Purpose and Policy. These Wastewater Discharge Regulations impose requirements for discharges into the wastewater collection and treatment systems and enable the City of Hayward to comply with the administrative provisions of the Federal Clean Water Act, National Pollutant Discharge Elimination System permit conditions set by the Regional Water Quality Control Board including applicable effluent limitations, national standards of performance, toxic and pretreatment effluent standards, and any other discharge criteria which are required or authorized by state or federal law, and to derive the maximum public benefits by regulating the quality and quantity of wastewater discharged into the East Bay Dischargers Authority system. These regulations provide a means for determining wastewater volumes, the setting of user charges and fees for the equitable distribution of costs to all users, and issuance of permits to certain users. Revenues derived from the application of these regulations shall be used to defray the City’s costs of operating and maintaining adequate wastewater collection and treatment systems and to provide sufficient funds for capital outlay, bond service costs, capital improvements, and depreciation.

1.02 Definitions. For the purpose of this article, certain words and phrases are defined and shall be construed as set out in this section. Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give

this article its most reasonable application. Terms herein shall be consistent with words and definitions in the Code of Federal Regulations Title 40 (40 CFR), Parts 136 and 403, the Porter-Cologne Water Quality Act, and the Federal Water Pollution Control Act as amended in 1972. Words, phrases or terms not specifically defined herein, and having a technical or specialized meaning shall be defined as set forth in 40 CFR Parts 136 and 403.

- (a) Amalgam. An alloy containing mercury, tin, silver, or copper that is used in dentistry to restore teeth.
- (b) Authorized or Duly Authorized Representative of the User.
 - (1) If the User is a corporation:
 - (i) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
 - (ii) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - (2) If the User is a partnership or sole proprietorship: a general partner or proprietor, respectively.
 - (3) If the User is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
 - (4) The individuals described in paragraphs 1 through 3, above, may designate a Duly Authorized Representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City. If an authorization of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for

environmental matters for the company, a new authorization satisfying the requirements of paragraphs 1 through 3 of this section shall be submitted to the City prior to or together with any reports to be signed by an authorized representative.

- (c) Beneficial Uses. Uses of the waters of the state that may be protected against quality degradation include, but are not necessarily limited to, domestic, municipal, agricultural and industrial supply, power generation, recreation, aesthetic enjoyment, navigation and the preservation and enhancement of fish, wildlife and other aquatic organisms, resources or reserves, and other uses, both tangible or intangible, as specified by federal or state law.
- (d) Best Management Practices or BMPs. Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Chapter 2. BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. BMPs also include alternative means (i.e., management plans) of complying with, or in place of certain established categorical pretreatment standards and effluent limits.
- (e) Building Sewer. A sewer conveying wastewater from the premises of a user to the City sewer.
- (f) Bypass. The intentional diversion of waste streams from any portion of a user's treatment facility.
- (g) Carbonaceous Biochemical Oxygen Demand or CBOD. The quantity of oxygen utilized in the biochemical oxidation of organic matter in the presence of a nitrification inhibitor under standard laboratory procedures for five (5) days at 20 degrees centigrade, usually expressed as a concentration (e.g., mg/l).
- (h) Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. section 1317) that apply to a specific category of users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.
- (i) Categorical Industrial User. An Industrial User subject to a categorical pretreatment standard or categorical standard.
- (j) City. The City of Hayward.
- (k) City Sewer. A sewer owned and operated by the City of Hayward and tributary to the treatment facility operated by the City.

- (l) Compatible Pollutant. Biochemical oxygen demand (BOD), suspended solids (SS), pH and fecal coliform bacteria, plus additional pollutants identified in the City's National Pollutant Discharge Elimination System (NPDES) permit if the publicly owned treatment works was designed to treat such pollutants, and in fact does remove such pollutants to a substantial degree. As required by the NPDES permit, the City analyzes carbonaceous biochemical oxygen demand (CBOD), a component of total BOD.
- (m) Composite Sample. A sample which is collected manually or automatically, and discretely or continuously, based on time or flow intervals.
- (n) Contamination. An impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. Contamination shall include any equivalent effect resulting from the disposal of wastewater, whether or not waters of the state are affected.
- (o) Daily Maximum Limit. The maximum allowable discharge limit of a pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where Daily Maximum Limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.
- (p) Direct Discharge. The discharge of treated or untreated wastewater directly to the Waters of the State of California.
- (q) Domestic Sewage. Liquid and waterborne wastes derived from the ordinary living processes, free from industrial wastes, and of such character as to permit satisfactory disposal, without special treatment, into the City's sewerage system.
- (r) East Bay Dischargers Authority. The joint powers of authority comprised of the City of Hayward, the City of San Leandro, the Oro Loma Sanitary District, the Castro Valley Sanitary District, and the Union Sanitary District.
- (s) EPA. The United States Environmental Protection Agency or, where appropriate, a duly authorized official of said agency.
- (t) Existing Source. Any source of discharge that is not a "New Source."
- (u) Federal Act, Clean Water Act, or Act. The Federal Water Pollution Control Act, PL 92-500, and any amendments thereto; as well as any guidelines, limitations, and standards promulgated by the Environmental Protection Agency (EPA) pursuant to the Act. Text of the original law and subsequent amendments are

documented in 33 U.S. Code 1251.

- (v) Grab Sample. A sample that is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed fifteen (15) minutes.
- (w) Holding Tank Waste. Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum pump tank trucks.
- (x) Incompatible Pollutant. Any pollutant which is not a compatible pollutant as defined in this section.
- (y) Indirect Discharge or Discharge. The discharge or introduction of pollutants from any source regulated under Section 307(b) or (c) of the Act into the POTW.
- (z) Industrial User. All establishments engaged in producing, manufacturing, or processing operations, which result in the production and/or discharge into City sewers of industrial wastes; and all other establishments engaged in any activity resulting in the production and discharge to City sewers of industrial wastes.
- (aa) Instantaneous Limit. The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.
- (bb) Interference. A discharge which, alone or in conjunction with a discharge or discharges from other sources, both:
 - (1) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
 - (2) therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.
- (cc) Local Limit. Specific discharge limits developed and enforced by the City upon industrial or commercial facilities to implement the general and specific

- discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b).
- (dd) Manager. The City Manager or designated staff such as the Public Works Director and Water Pollution Source Control Administration.
 - (ee) Mass Emission Rate. The mass of material discharged to the sewer system during a given time interval. Unless otherwise specified, the mass emission rate shall be expressed as pounds per day of a particular constituent or combination of constituents.
 - (ff) National Pollutant Discharge Elimination System or NPDES Permit. A permit issued pursuant to Section 402 of the Act.
 - (gg) National Pretreatment Standard, Pretreatment Standard, or Standard. Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307 (b) and (c) of the Act, which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 40 CFR 403.5.
 - (hh) New Source. Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section and subject to the terms outlined in 40 CFR 403.3(m).
 - (ii) Nuisance. Anything which meets all of the following requirements:
 - (1) is injurious to health or is indecent or offensive to the senses or an obstruction to the free use of property so as to interfere with the comfort or enjoyment of life or property, and
 - (2) which affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and
 - (3) occurs during, or as a result of, the treatment or disposal of waste.
 - (jj) Pass Through. A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).
 - (kk) Person. Any individual, partnership, firm, association, corporation, or public

agency including the State of California and the United States of America.

- (ll) pH. A measure of the acidity or alkalinity of wastewater. pH is measured on a scale of 0 to 14, 0 being extremely acidic, 7 neutral, and 14 extremely alkaline. The pH corresponds to the logarithm (base 10) of the reciprocal concentration of hydrogen ions expressed in gram-ions per liter of solution.
- (mm) Phenols. Total hydroxyl derivatives of benzene and its condensed nuclei (including phenol, chlorinated phenols, nitrophenols and chlorinated cresols) identified in Table 1, Section 307 of the Act which are detectable by EPA approved methods.
- (nn) Pollutant. Any dredge spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.
- (oo) Pollution. An alteration of the quality of the waters of the state by waste to a degree which unreasonably affects such waters for beneficial use or facilities which serve such beneficial uses. Pollution may include contamination.
- (pp) Polychlorinated biphenyls (PCBs). Total PCBs detectable by EPA approved methods.
- (qq) Premises. A parcel of real estate including any improvements thereon which is determined by the City to be a single user for purposes of receiving, using, and paying for service.
- (rr) Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a Publicly Owned Treatment Works. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by Section 2.10. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the Publicly Owned Treatment Works. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR 403.6(e).
- (ss) Pretreatment Requirement. Any substantive or procedural requirement related to pretreatment, other than a national pretreatment standard, imposed on an Industrial User (IU).

- (tt) Publicly Owned Treatment Works or POTW. A treatment works as defined by section 212 of the Act, which is owned by a state or municipality (as defined by section 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.
- (uu) POTW Treatment Plant. That portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.
- (vv) Severe Property Damage. Substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- (ww) Significant Industrial User.
- (1) All users for which federal categorical standards have been promulgated;
 - (2) Any user that discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, non-contact cooling and boiler blowdown wastewater);
 - (3) Any user that contributes a process waste stream which comprises five percent or more of the average dry weather hydraulic or organic (CBOD and SS) capacity of the POTW treatment plant;
 - (4) Any user that has a reasonable potential, in the opinion of the manager or the pretreatment program approval authority to significantly or adversely affect the POTW treatment plant.
 - (5) The City may determine that an Industrial User subject to categorical pretreatment standards is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and the following conditions are met:

- (i) The Industrial User, prior to the City's finding, has consistently complied with all applicable categorical pretreatment standards and Requirements;
 - (ii) The Industrial User annually submits the certification statement required in Section 4.09(b), together with any additional information necessary to support the certification statement; and
 - (iii) The Industrial User never discharges any untreated concentrated wastewater.
- (6) Any user classified as a significant industrial user under the above definition, except users for which federal categorical pretreatment standards have been promulgated, may be de-classified as a significant industrial user if, in the opinion of the City, the user no longer has a reasonable potential for adversely affecting the collection and/or treatment system or for violating any pretreatment regulations.
- (xx) Significant Noncompliance. An industrial user is in significant noncompliance if its discharge meets one or more of the following criteria:
- (1) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken for the same pollutant parameter during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 CFR 403.3(l);
 - (2) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR 403.3(l) multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil and grease; and 1.2 for all other pollutants except pH);
 - (3) Any other violation of a pretreatment standard or requirement as defined by 40 CFR 403.3(l), which may include a violation of BMPs, daily maximum limits, long-term average, instantaneous limit, or narrative standard, that the City determines has caused, alone or in combination with other discharges, interference or pass-through (including endangering the health of POTW personnel or the general public);
 - (4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under authority of 40 CFR 403.8(f)(1)(vi)(B) to halt or prevent such a discharge;

- (5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;
 - (6) Failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
 - (7) Failure to accurately report noncompliance;
 - (8) Any other violation or group of violations which the City determines will adversely affect the operation or implementation of the local pretreatment program.
- (yy) Slug Discharge. Any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause interference or pass through, or in any other way violate the POTW's regulations, local limits or permit conditions.
 - (zz) Storm Water. Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snow melt.
 - (aaa) Storm Sewer. A sewer which carries storm and surface waters and drainage, but which excludes sewage and industrial waste.
 - (bbb) Total Suspended Solids / Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and that is removable by laboratory filtering. The term "Total Suspended Solids" is synonymous with "Suspended Solids".
 - (ccc) Unpolluted Water. Water to which no constituent has been added, either intentionally or accidentally, which would render such water unacceptable to the City for disposal to storm or natural drainages or directly to surface waters.
 - (ddd) Unclassified User. A user whose discharge does not correspond to any UCC because of variations in wastewater constituents or treatment costs.
 - (eee) User. A source of indirect discharge.
 - (fff) User Classification Code or UCC. Code designation assigned to commercial and industrial users based on their wastewater discharge strength and characteristics in comparison with domestic wastewater.
 - (ggg) Waste. Includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation of

whatever nature, including such waste placed within containers of whatever nature prior to, and for purposes of, disposal.

- (hhh) Wastewater. Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.
- (iii) Wastewater Constituents and Characteristics. The individual chemical, physical, bacteriological and radiological parameters, including volume and flow rate and such other parameters that serve to define, classify or measure the contents, quality, quantity, and strength of wastewater.
- (jjj) Wastewater Discharge Permit or Permit. A legal document used as a control mechanism to ensure compliance with regulations that grants revocable permission to discharge wastewater to the sanitary sewer.
- (kkk) Water Quality Requirements. Requirements for the City's treatment plant effluent established by the NPDES permit, or by State or Federal regulatory agencies. Water quality requirements include effluent limitations and waste discharge standards, limitations, or prohibitions which may be established or adopted by State or Federal laws or regulatory agencies.
- (III) Waters of the State. Any water, surface or underground, including saline waters within the boundaries of the state.
- (mmm) Abbreviations. The following abbreviations shall have the designated meaning:

CBOD	–	Carbonaceous Biological Oxygen Demand
CFR	–	Code of Federal Regulations
IU	–	Industrial User
L	–	Liter
mg	–	Milligrams
mg/L	–	Milligrams per liter
NPDES	–	National Pollutant Discharge Elimination System
SIC	–	Standard Industrial Classification
TSS	–	Total Suspended Solids

1.03 Sampling and Analysis Methods and Procedures.

- (a) Analytical Requirements. Analyses, including sampling techniques, shall be performed in accordance with the techniques prescribed in 40 CFR part 136 and amendments thereto. Where 40 CFR part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in

question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the Manager or other parties approved by the EPA.

- (b) Sample Collection. Samples collected to satisfy reporting requirements must be obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.
- (i) Except as indicated in Section 1.03(b)(ii) and (iii) below, the User must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Manager. Where time-proportional composite sampling or grab sampling is authorized by the City, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, phenol, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the City, as appropriate. In addition, grab samples may be required to show compliance with Instantaneous Limits.
 - (ii) Samples for oil and grease, temperature, pH, cyanide, phenol, sulfides, and volatile organic compounds must be obtained using grab collection techniques.
 - (iii) For sampling required in support of baseline monitoring and 90-day compliance reports required in Section 4.01(c) and 4.01(e), a minimum of four (4) grab samples must be used for pH, cyanide, phenol, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Manager may authorize a lower minimum. For the reports required by paragraphs Section 4.01(a) (40 CFR 403.12(e) and 403.12(h)), the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance with applicable pretreatment standards and requirements.
- (c) All monitoring results obtained pursuant to this section must be submitted to the City, regardless of whether the City required such monitoring.

Chapter 2**REGULATIONS**

2.01 Prohibitions on Discharge. No person shall discharge to the City sewer system wastes which cause, threaten to cause, or are capable of causing, either alone or by interaction with other substances:

- (a) a fire or explosion, including but not limited to discharges with a closed cup flashpoint of less than 140 °F (60 °C);
- (b) Pollutants which cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such discharges;
- (c) Heat in amounts which will inhibit biological activity in the POTW resulting in Interference, but in no case heat in such quantities that the temperature at the POTW exceeds 40 °C (104 °F) unless the Approval Authority, upon request of the POTW, approves alternate temperature limits;
- (d) obstruction of flow in a sewer system or injury of the system or damage to the wastewater collection, treatment, or disposal facilities;
- (e) danger to life or safety of personnel;
- (f) Any trucked or hauled pollutants, except at discharge points designated by the POTW;
- (g) a nuisance or prevention of the effective maintenance or operation of the sewer system, through having a strong, unpleasant odor;
- (h) air pollution by the release of toxic or malodorous gases or malodorous gas-producing substances;
- (i) interference with the wastewater treatment process that causes the City's effluent or any other product of the treatment process, residues, sludges, or scums, to be unsuitable for recycling or reuse; or interference with the recycling process;
- (j) a detrimental environmental impact or a nuisance in the waters of the state or a condition unacceptable to any public agency having regulatory jurisdiction over the City;
- (k) discoloration or any other condition in the quality of the City's treatment works effluent in such a manner that receiving water quality requirements established by law cannot be met;

- (l) conditions at or near the City's treatment works which violate any statute or any rule, regulation, or ordinance of any public agency or state or federal regulatory body;
- (m) quantities or rates of flow which overload the City's collection or treatment facilities or cause excessive collection or treatment costs to the City, or may use a disproportionate share of the City facilities;
- (n) the evolution of toxic gases, fumes, or vapors in quantities injurious to the health and safety of City personnel; or
- (o) pass-through of the City's treatment works, causing a violation of any requirement of the POTW's NPDES permit;

2.02 Prohibitions on Storm Drainage and Ground Water. Storm water, ground water, rain water, street drainage, subsurface drainage or yard drainage shall not be discharged through direct or indirect connections to a City sewer unless approved by the City. The City may approve the discharge of such water only when no reasonable alternative method of disposal is available.

If a permit is granted for the discharge of such water into a City sewer, the user may be required to pay the applicable user charges and fees and meet such other conditions as required by the City.

2.03 Limitations on Unpolluted Water. Unpolluted water, including but not limited to cooling water, process water, or blow-down from cooling towers or evaporative coolers, may be discharged through direct or indirect connection to a City sewer. The City may, at its discretion, issue a permit for discharge directly to the City sewer upon written application by the user and payment of the applicable user charges and fees.

2.04 Limitations on Radioactive Wastes. No person shall discharge or cause to be discharged into a City sewer any radioactive waste except when:

- (a) the person is authorized to use radioactive materials by the California Department of Public Health or other governmental agency empowered to regulate the use of radioactive materials; and
- (b) the waste is discharged in strict conformity with the requirements of the United States Nuclear Regulatory Commission, the United States Department of Energy, and/or the California Radiation Control Regulations; and
- (c) the person is in compliance with all rules and regulations of all other applicable regulatory agencies.

2.05 Limitations on the Use of Garbage Grinders.

Waste from garbage grinders shall not be discharged into a City sewer except:

- (a) Where the user has obtained approval from the City.
- (b) Such grinders shall shred the waste to a degree that all particles will be carried freely under normal flow conditions prevailing in the City sewer. Garbage grinders shall not be used for grinding plastic, paper products, inert materials, or garden refuse.

2.06 Limitations on Points of Discharge. No person shall discharge any substances into the City sewer system other than through an approved building sewer. The City may, at its discretion, issue a permit for discharge directly into a manhole or other opening in a City sewer upon written application by the user and payment of the applicable user charges and fees.

2.07 Holding Tank Waste.

- (a) A user proposing to discharge holding tank waste into a City sewer shall secure a permit. Unless otherwise allowed by the City under the terms and conditions of the permit, a separate permit shall be secured for each separate discharge.
- (b) Unless specifically accepted under the terms and conditions of the permit, no holding tank wastes from outside the City of Hayward's sewer service system shall be discharged.
- (c) The permit shall state the specific location of discharge, the time of day the discharge is to occur, the volume of the discharge and the wastewater constituents and characteristics.
- (d) The waste proposed to be discharged must be tested, and the results must be transmitted to the City for review. The discharge must be approved by the City before discharge takes place.
- (e) If a permit is granted for discharge of holding tank waste into a City sewer, the user shall pay the applicable user charges and fees and shall meet such other conditions as required by the City.

2.08 Limitations on Wastewater Strength. All pretreatment limitations and prohibitions developed under federal requirements or specified in the City's Wastewater Discharge Regulations shall be deemed pretreatment standards for the purposes of section 307(d) of the Federal Water Pollution Control Act. Users must comply with the categorical pretreatment standards found at 40 CFR Chapter I, Subchapter N, Parts 405–471. Discharge standards established herein shall be revised as necessary to comply with federal requirements documented in the Code of Federal Regulations, Title 40, Part 403.

2.08.1 No person shall discharge wastewater containing in excess of the following daily maximum limits/City's local limits:
(Amended by Ord. 93-22, adopted October 5, 1993)

1.0 mg/L arsenic
0.2 mg/L cadmium
2.0 mg/L copper

1.0 mg/L lead
 0.01 mg/L mercury
 1.0 mg/L nickel
 0.5 mg/L silver
 2.0 mg/L total chromium
 3.0 mg/L zinc

2.08.2 No person shall discharge any wastewater in violation of the following instantaneous limits/City's local limits:
 (Amended by Ord. 97-06, adopted May 13, 1997 and Ord. 93-22, adopted October 5, 1993)

- (a) containing in excess of 0.6 mg/L cyanide;
- (b) having a temperature higher than 150° F (65.5° C), or any thermal discharge which as a result of temperature and/or volume causes the influent of the wastewater treatment plant to exceed 104° F (40° C);
- (c) containing more than 300 mg/L of oil or grease of animal or vegetable origin, unless a higher limit is established by permit when all of the following conditions are met:
 - (1) The oil and grease is discharged in an emulsified or other form which, in the opinion of the City, poses no threat to clogging of the wastewater collection system;
 - (2) The oil and grease, in the opinion of the City, poses no threat to the operation of the wastewater treatment plant; and
 - (3) The oil and grease, in the opinion of the City, is amenable to removal and treatment by the processes utilized by the wastewater treatment plant;
- (d) containing more than 100 mg/L of oil or grease of mineral or petroleum origin;
- (e) having a pH lower than 6.0, or otherwise causing corrosive structural damage to the POTW, equipment, or the City's collection system;
- (f) containing in excess of 2.0 mg/L Total Toxic Organics (TTO), measured as the sum of:

1. Acenaphthene

2. Acrolein
3. Acrylonitrile
4. Benzene
5. Benzidine
6. Carbon tetrachloride (tetrachloromethane)
7. Chlorobenzene
8. 1,2,4-trichlorobenzene
9. Hexachlorobenzene
10. 1,2-dichloroethane
11. 1,1,1-trichloroethane
12. Hexachloroethane
13. 1,1-dichloroethane
14. 1,1,2-trichloroethane
15. 1,1,2,2-tetrachloroethane
16. Chloroethane
17. Bis (2-chloroethyl) ether
18. 2-chloroethyl vinyl ether (mixed)
19. 2-chloronaphthalene
20. 2,4,6-trichlorophenol
21. Parachlorometa cresol
22. Chloroform (trichloromethane)
23. 2-chlorophenol
24. 1,2-dichlorobenzene
25. 1,3-dichlorobenzene
26. 1,4-dichlorobenzene
27. 3,3 dichlorobenzidine
28. 1,1-dichloroethylene
29. 1,2-trans-dichloroethylene
30. 2,4-dichlorophenol
31. 1,2-dichloropropane
32. 1,3-dichloropropylene (1,3-dichloropropene)
33. 2,4-dimethylphenol
34. 2,4-dinitrotoluene
35. 2,6-dinitrotoluene
36. 1,2-diphenylhydrazine
37. Ethylbenzene
38. Fluoranthene
39. 4-chlorophenyl phenyl ether
40. 4-bromophenyl phenyl ether
41. Bis (2-chloroisopropyl) ether
42. Bis (2-chloroethoxy) methane
43. Methylene chloride (dichloromethane)
44. Methyl chloride (chloromethane)
45. Methyl bromide (bromomethane)
46. Bromoform (tribromomethane)

47. Dichlorobromomethane
48. Chlorodibromomethane
49. Hexachlorobutadiene
50. Hexachlorocyclopentadiene
51. Isophorone
52. Naphthalene
53. Nitrobenzene
54. 2-nitrophenol
55. 4-nitrophenol
56. 2,4-dinitrophenol
57. 4,6-dinitro-o-cresol
58. N-nitrosodimethylamine
59. N-nitrosodiphenylamine
60. N-nitrosodi-n-propylamine
61. Pentachlorophenol
62. Bis (2-ethylhexyl) phthalate
63. Butyl benzyl phthalate
64. Di-n-butyl phthalate
65. Di-n-octyl phthalate
66. Diethyl phthalate
67. Dimethyl phthalate
68. 1,2-benzanthracene (benzo(a)anthracene)
69. Benzo(a)pyrene (3,4-benzopyrene)
70. 3,4-Benzofluoranthene (benzo(b)fluoranthene)
71. 11,12-benzofluoranthene (benzo(k)fluoranthene)
72. Chrysene
73. Acenaphthylene
74. Anthracene
75. 1,12-benzoperylene (benzo(ghi)perylene)
76. Fluorene
77. Phenanthrene
78. 1,2,5,6-dibenzanthracene (dibenzo(a,h)anthracene)
79. Indeno (1,2,3-cd) pyrene (2,3-o-phenylene pyrene)
80. Pyrene
81. Tetrachloroethylene
82. Toluene
83. Trichloroethylene
84. Vinyl chloride (chloroethylene)

- (g) containing in excess of 5.0 mg/L Phenol
- (h) containing any trace of pesticides, poly-chlorinated biphenyls (PCBs) and dioxins (e.g., TCDD) as determined by EPA-approved analytical methodologies for these compounds:

1. Aldrin
2. Dieldrin
3. Chlordane (technical mixture and metabolites)
4. 4,4-DDT
5. 4,4-DDE(p,p-DDX)
6. 4,4-DDD(p,p-TDE)
7. Alpha-endosulfan
8. Beta-endosulfan
9. Endosulfan sulfate
10. Endrin
11. Endrin aldehyde
12. Heptachlor
13. Heptachlor epoxide
14. (BHC-hexachlorocyclohexane)
15. Alpha-BHC
16. Beta-BHC
17. Gamma-BHC
18. Delta-BHC
19. (PCB-polychlorinated biphenyls)
20. PCB-1242 (Arochlor 1242)
21. PCB-1254 (Arochlor 1254)
22. PCB-1221 (Arochlor 1221)
23. PCB-1232 (Arochlor 1232)
24. PCB 1248 (Arochlor 1248)
25. PCB-1260 (Arochlor 1260)
26. PCB-1016 (Arochlor 1016)
27. Toxaphene
28. 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)

For groundwater remediation permits only, the following special limits apply:

- (i) containing in excess of 5.0 mg/L total petroleum hydrocarbons--gasoline or diesel
- (j) containing in excess of 0.5 mg/L the sum of benzene, ethyl benzene, toluene, xylene.

2.08.3 Effluent limitations promulgated by the Federal Act shall apply in any instance where they are more stringent than those in these regulations. Under section 307 (b) and (c) of the Act, federal pretreatment standards are designed to achieve two purposes: (1) to protect the operation of POTWs, and (2) to prevent the discharge of pollutants which pass through POTWs inadequately treated. Users in industrial categories subject to effluent guidelines issued under section 304(b) of the Act which are discharging incompatible pollutants to POTWs are required to adopt best control technology currently

available, as defined by the EPA administrator pursuant to section 304(b) of the Act.

2.08.4 The Manager or designated staff may develop BMPs, by ordinance or in individual wastewater discharge permits, to implement local limits and the requirements of Section 2.01. Such BMPs shall be considered local limits and pretreatment standards for the purposes of this Section and section 307(d) of the Act.

2.09 Prohibition on Slug Discharges. No user shall discharge any pollutant, including oxygen-demanding pollutants, at a flow rate and/or pollutant concentration which causes or threatens to cause interference with the wastewater treatment process. The City may require any user to develop a spill/slug control plan as described in Section 4.02(c)(10) of these regulations when, in the opinion of the City, a user has a demonstrated or reasonable potential to discharge in such a manner.

2.10 Use of Dilution Prohibited. No user shall increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate pretreatment to achieve compliance with a pretreatment standard, requirement or discharge limitation.

2.11 Prohibition of Bypass.

- (a) Bypass is prohibited and the City may take enforcement action against any user for bypass per 40 CFR Sec 403.17 unless:
 - (1) bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (2) there were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
 - (3) the industrial user submitted notices as described in 40 CFR 403.17(c). If an Industrial User knows in advance of the need for a bypass, it shall submit prior notice to the City, if possible at least ten days before the date of the bypass. An Industrial User shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the City within 24 hours from the time the Industrial User becomes aware of the bypass.

2.12 Prohibition on Discharge of Process Solution Tanks. No user shall, without prior and explicit approval of the City, discharge the contents, in whole or part, of any process solution tank to the sewer system. For the purposes of this section, such materials include, but are not limited to,

concentrated solutions utilized within any commercial or industrial operation, containerized liquids of any description whatsoever, spoiled or otherwise unusable raw materials of any description whatsoever, spoiled or otherwise unusable products of any description whatsoever.

2.13 Prohibition on Discharge of Petroleum or Mineral Oil Causing Pass-through or Interference. Notwithstanding the provisions of Section 2.08.2(d) no user may discharge petroleum oil, non-biodegradable cutting oil or other products of mineral origin in any amount that causes interference or pass-through.

2.14 Prohibition of the Discharge of Trucked or Hauled Wastes. The discharge of any trucked or otherwise hauled wastes to the sanitary sewer system is prohibited except as the City may permit under the provisions of Section 2.07.

2.15 Requirements for Dental facilities that Remove or Place Amalgam Fillings. This section shall be known and may be cited as the Dental Amalgam Recovery Program Ordinance of the City of Hayward.

2.15.1 Definitions. For the purposes of this section, the following definitions shall apply:

- (a) Amalgam separator. A device that employs filtration, settlement, centrifugation, or ion exchange to remove amalgam and its metal constituents from a dental office vacuum system before it discharges to the sewer.
- (b) Amalgam waste. Includes non-contact amalgam (amalgam scrap that has not been in contact with the patient); contact amalgam (including, but not limited to, extracted teeth containing amalgam); amalgam sludge captured by chairside traps, vacuum pump filters, screens, and other amalgam trapping devices; used amalgam capsules; and leaking or unusable amalgam capsules.
- (c) ISO 11143. The International Organization for Standardization's standard for amalgam separators.

2.15.2 Best Management Practices. All owners and operators of dental facilities that remove or place amalgam fillings shall comply with the following waste management practices:

- (a) Segregate amalgam containing waste. Amalgam waste must never be placed in the regular trash, placed with infectious (red bag) waste, or flushed down the drain or toilet.
- (b) Eliminate all use of bulk elemental mercury (also referred to as liquid or raw mercury). Any bulk elemental mercury must be recycled or disposed of as hazardous waste.

- (c) Use only pre-capsulated dental amalgam in the smallest appropriate size; keep a variety of amalgam capsules on hand to more closely match the amount needed in a restoration.
- (d) Change or empty chair-side traps frequently and store the trap and its contents with amalgam waste. Never rinse traps in the sink. If you have reusable traps, make sure any material you use to clean the trap is disposed of with amalgam waste.
- (e) Do not use sodium hypochlorite (bleach) and other chlorine-containing products to cleanse vacuum lines, as these products have been shown to release the mercury in the amalgam. Information on non-bleach line cleaners can be found at www.baywise.org.
- (f) Change vacuum pump filters and screens as needed or as directed by the manufacturer. Seal and store filters and screen, as well as their contents (including any water that may be present), with amalgam waste in an airtight container.
- (g) For dry vacuum turbine units, have a qualified maintenance technician, licensed amalgam recycler or hazardous waste disposal service pump out and clean the air-water separator tank at least once per six months. Perform this service more frequently if necessary to maintain suction or if so directed by the vacuum system manufacturer.
- (h) Have a licensed recycling contractor, mail-in service, or hazardous waste hauler remove your amalgam wastes. Recycling is the preferred method for disposal of amalgam wastes.
- (i) Maintain written or computerized logs of amalgam waste generated, and of amalgam waste removed from the vacuum system or plumbing. In addition, obtain receipts or other certified documentation from your recycler or hazardous waste hauler of all amalgam waste recycling and disposal shipments. Keep these receipts on file for at least five years, and make them available to authorized City inspectors upon request.
- (j) Store amalgam waste in airtight containers. Follow recycler's or hauler's instructions for disinfection of waste and separation of contact and non-contact amalgam. Do not use disinfectant solutions with oxidizers, such as bleach, to disinfect the amalgam.
- (k) Use a licensed hauler to transport spent x-ray fixer solution to be recycled or managed as hazardous waste. Never pour fixer solution down the drain.

- (l) Train staff in the proper handling, management, and disposal of mercury-containing material and fixer solutions. Maintain a training log and keep this log for at least five years. This log must be made available to authorized City inspectors upon request.

2.15.3 Amalgam Separator Requirements. All owners and operators of dental vacuum suction systems, except as set forth in subsection 2.15.4 of this section, shall comply with the following:

- (a) An ISO 11143 certified amalgam separator device shall be installed for each dental vacuum suction system on or before January 1, 2011; provided, however, that all dental facilities that are newly constructed on and after the effective date of this ordinance shall include an installed ISO 11143 certified amalgam separator device capable of removing a minimum of 95 percent of amalgam. The amalgam separator system shall be certified at flow rates comparable to the flow rate of the actual vacuum suction system operation. Neither the separator device nor the related plumbing shall include an automatic flow bypass. For facilities that require an amalgam separator that exceeds the practical capacity of ISO 11143 test methodology, a non-certified separator will be accepted, provided that smaller units from the same manufacturer and of the same technology are ISO-certified. For facilities that have installed amalgam separators on or before the effective date of this Ordinance that are not ISO-certified, they may be grandfathered in if it can be shown that the existing device provides amalgam removal similar to an ISO-certified system. Alternative materials and methods may be proposed to the Manager for approval.
- (b) Self-certification of Amalgam Separator Installation form issued by the City of Hayward shall be submitted to the Manager within 30 days of installation.
- (c) Amalgam separators shall be maintained in accordance with manufacturer recommendations. Installation, certification, and maintenance records shall be available for immediate inspection upon request by the Manager or a designee during normal business hours.

2.15.4 Exemptions. The following types of dental practice are exempt from this Section 2.15, provided that removal or placement of amalgam fillings occurs at the facility no more than 3 days per year:

- (a) Orthodontics
- (b) Periodontics
- (c) Oral and maxillofacial surgery
- (d) Radiology
- (e) Oral pathology or oral medicine
- (f) Endodontics and prosthodontics

Chapter 3

WASTEWATER VOLUME DETERMINATION

3.01 Metered Water Supply. User charges and fees shall be determined based on the total amount of water used from all sources unless, in the opinion of the City, significant portions of water received are not discharged to a City sewer. The total amount of water used from public and private sources will be determined by means of public meters or by private meters, installed and maintained at the expense of the user and approved by the City.

3.02 Metered Wastewater Volume and Metered Diversions. For users where, in the opinion of the City, a significant portion of the water received from any metered source does not flow into a City sewer because of the principal activity of the user or removal by other means, the user charges and fees will be determined based on the volume of water discharged from such premises into a City sewer. Written notification and proof of the diversion of water shall be provided by the user if the user is to avoid the determination of user charges and fees based on the total amount of water used from all sources. The user may install a meter of a type and at a location approved by the City and at the user's expense. Such meters may measure either the amount of sewage discharged or the amount of water diverted. Such meters shall be tested for accuracy at the expense of the user when deemed necessary by the Manager.

3.03 Estimated Wastewater Volume.

- (a) Users without Source Meters. For users where, in the opinion of the City, it is unnecessary or impractical to install meters, the quantity of wastewater discharged may be based upon an estimate prepared by the City. This estimate shall be based upon a rational determination of the wastewater discharged and may consider such factors as the number of fixtures, seating capacity, population equivalent, annual production of goods and services, or such other determinants of water use necessary to estimate the wastewater volume discharged.
- (b) Users with Source Meters. For users who, in the opinion of the City, divert a significant portion of their flow from a City sewer, the user charges may be based upon an estimate of the volume to be discharged, provided the user obtains a Wastewater Discharge Permit or other approval by the City and pays the applicable user charges and fees. The estimate shall include the method and calculations used to determine the wastewater volume and may consider such factors as the number of fixtures, seating capacity, population equivalents, annual production of goods and services, or such other determinants of water use necessary to estimate the wastewater volume discharged.

Chapter 4

ADMINISTRATION

4.01 Submission of Required Reports. The City may require that any person discharging or proposing to discharge wastewater to a City sewer file reports relating to that discharge or proposed discharge pursuant to 40 CFR 403.12. All required reports shall include the certification statements and signatory requirements described in Section 4.09 of these regulations. Required reports may include:

- (a) Wastewater Discharge Report. Wastewater Discharge Reports may include, but not be limited to: nature of process, volume, flow rates, mass emission rate, production quantities, hours of operation, number of employees, and other information which relates to the generation of waste, including wastewater constituents and characteristics in the wastewater discharge. Such reports may also include the chemical constituents and quantity of liquid or gaseous materials stored on site even though they may not normally be discharged. The City may require wastewater discharge information in the form of self-monitoring reports or periodic reports on continuing compliance. All monitoring results obtained pursuant to Section 1.03 of these regulations must be submitted to the City, regardless of whether the City required such monitoring.

The reports required in paragraph (a) of this section shall contain the results of sampling and analysis of the Discharge, including the flow and the nature and concentration, or production and mass where requested by the City, of pollutants contained therein which are limited by the applicable pretreatment standards. This sampling and analysis may be performed by the City in lieu of the Industrial User. Where the POTW performs the required sampling and analysis in lieu of the Industrial User, the user will not be required to submit the compliance certification required under Section 4.09(a). In addition, where the POTW itself collects all the information required for the report, including flow data, the Industrial User will not be required to submit the report.

The monitoring reports required in paragraph (a) of this section must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which are representative of conditions occurring during the reporting period. The City shall require the right frequency of monitoring necessary to assess and assure compliance by Industrial Users with applicable pretreatment standards and requirements. Grab samples must be used for pH, cyanide, phenol, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the City. Where time-proportional composite sampling or grab sampling is authorized by the City, the samples must be representative of the Discharge and the decision to allow the alternative sampling must be documented in

the Industrial User file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 CFR part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: For cyanide, phenol, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil & grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the City, as appropriate.

- (b) Monitoring Waiver. The City may authorize an Industrial User subject to a categorical pretreatment standard to forego sampling of a pollutant regulated by a categorical pretreatment standard if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User [see 40 CFR 403.12(e)(2)]. This authorization is subject to the following conditions:
- (1) The waiver may be authorized where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical Standard and otherwise includes no process wastewater.
 - (2) The monitoring waiver is valid only for the duration of the effective period of the individual wastewater discharge permit, but in no case longer than 5 years. The user must submit a new request for the waiver before the waiver can be granted for each subsequent individual wastewater discharge permit. See Section 4.02(c)(11).
 - (3) In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.
 - (4) The request for a monitoring waiver must be signed in accordance with Section 1.02(b), and include the certification statement in 4.09(c) (40 CFR 403.6(a)(2)(ii)).
 - (5) Non-detectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.
 - (6) Any grant of the monitoring waiver by the Manager must be included as a condition in the user's permit. The reasons supporting the waiver and any

information submitted by the user in its request for the waiver must be maintained by the Manager for 3 years after expiration of the waiver.

- (7) Upon approval of the monitoring waiver and revision of the user's permit by the Manager, the Industrial User must certify on each report with the statement in Section 4.09(c) below, that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User.
 - (8) In the event that a waived pollutant is found to be present or is expected to be present because of changes that occur in the user's operations, the user must immediately: Comply with the monitoring requirements of Section 4.01(a), or other more frequent monitoring requirements imposed by the Manager, and notify the Manager.
 - (9) This provision does not supersede certification processes and requirements established in categorical pretreatment standards, except as otherwise specified in the categorical pretreatment standard.
- (c) Baseline Monitoring Report. Categorical industrial users are required to submit a baseline monitoring report (BMR) under the circumstances set forth below. This report shall identify the facility, indicate permits held, describe operations, and contain flow and pollutant measurements. The requirements for a BMR, found in 40CFR Chapter I, Subchapter N, Part 403.12(b) are hereby incorporated into these regulations. These requirements specify conditions, including timelines, for completion of a BMR. The report shall be reviewed by an authorized representative of the user, and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance and/or additional pretreatment is required.

Baseline monitoring reports are required under the following circumstances:

- (1) At least 90 days prior to commencement of discharge for new users; or
- (2) For existing users, within 180 days after the effective date of an applicable categorical standard.

For sampling required in support of baseline monitoring and 90-day compliance reports required in paragraph (c) of this section, a minimum of four (4) grab samples must be used for pH, cyanide, phenol, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the City may authorize a lower minimum.

- (d) Compliance Schedule for the Installation of Technology. The City may require a user to develop a compliance schedule for the installation of technology to meet

applicable pretreatment standards or requirements. A compliance schedule for the installation of technology may be required even without violations, if the City determines one is necessary. Progress reports for the compliance schedule shall be considered a requirement.

The following conditions shall apply to the compliance schedule required by this Section of the ordinance:

- (1) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation). No increment referred to above shall exceed nine (9) months.
- (2) The user shall submit a progress report to the Manager no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule. In no event shall more than nine (9) months elapse between such progress reports to the Manager.
- (e) Report on Compliance with Categorical Deadline. Each categorical user shall submit a report within 90 days after the final date for compliance, or upon commencement of discharge, whichever comes later. The report shall contain flow and pollutant measurements, and a certification of whether pretreatment standards are being met consistently. If pretreatment standards are not being met consistently, a description of needed additional operations and maintenance or pretreatment shall be included. This certification shall be made by a qualified professional, and the report shall be reviewed by an authorized representative of the user.
- (f) Notice of Violation/Resampling Report. If results from sampling by a user indicate a violation, the user shall notify the City within 24 hours of confirming the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the City within 30 days after becoming aware of the violation.

Where the City has performed the sampling and analysis in lieu of the Industrial User, the City must perform the repeat sampling and analysis unless it notifies the user of the violation and requires the user to perform the repeat analysis. Resampling is not required if:

- (1) The City performs sampling at the Industrial User at a frequency of at least once per month; or

(2) The City performs sampling at the user between the time when the initial sampling was conducted and the time when the user or the Control Authority receives the results of this sampling.

- (g) Slug Control Plan. The City will evaluate whether each Significant Industrial User needs a plan or other action to control Slug Discharges. For Industrial Users identified as significant prior to November 14, 2005, this evaluation must have been conducted at least once by October 14, 2006; additional Significant Industrial Users must be evaluated within 1 year of being designated a Significant Industrial User. Significant Industrial Users are required to notify the POTW immediately of any changes at its facility affecting potential for a Slug Discharge. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

- (1) Description of discharge practices, including non-routine batch discharges;
- (2) Description of stored chemicals;
- (3) Procedures for immediately notifying the POTW of Slug Discharges, including any Discharge that would violate a prohibition under 2.01 with procedures for follow-up written notification within five days;
- (4) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response;

4.02 Wastewater Discharge Permits.

- (a) Mandatory Permits. All Significant Industrial Users proposing to connect or to discharge into a City sewer shall obtain a Wastewater Discharge Permit before connecting to or discharging into a City sewer. All existing Significant Industrial Users and unclassified users connected to or discharging into a City sewer who do not currently have a Wastewater Discharge Permit shall obtain such permit within 90 days of being notified by the City that a permit is required and shall comply with these regulations and any modifications made hereto within 90 days of their effective date.
- (b) Permit Application. Users seeking a Wastewater Discharge Permit shall complete and file with the Manager an application in the form prescribed by the Manager and accompanied by the applicable fees. The applicant may be required to submit, in units and terms appropriate for evaluation, the following information:
- (1) name, address, and SIC number of applicant;
 - (2) volume of wastewater to be discharged;

- (3) wastewater constituents and characteristics including, but not limited to, those mentioned in Section 2.08 as determined by an Environmental Laboratory Accreditation Program (ELAP)-certified laboratory approved by the City;
- (4) time and duration of discharge;
- (5) average and 30-minute peak wastewater flow rates, including daily, monthly, and seasonal variations, if any;
- (6) site plans, floor plans, mechanical and plumbing plans, and details to show all sewers and appurtenances by size, location, and elevation;
- (7) description of activities, facilities, and plant processes on the premises including all materials, processes, and types of materials which are or could be discharged;
- (8) each product produced by type, amount, and rate of production;
- (9) number and type of employees, and hours of work;
- (10) slug control plan which outlines discharge practices (including non-routine batch discharges), describes stored hazardous chemicals and those with the potential to cause pollution, and contains procedures both to notify the City immediately of slug discharges and to prevent adverse impacts from any accidental spill;
- (11) any requests for a monitoring waiver (or a renewal of an approved monitoring waiver) for a pollutant neither present nor expected to be present in the discharge based on Section 4.01(b) [40 CFR 403.12(e)(2)].
- (12) any other information as may be deemed by the Manager to be necessary to evaluate the permit application.

The Manager will evaluate the data and information furnished by the user and may require additional information. After evaluation and acceptance of the data and information furnished, the Manager may issue a Wastewater Discharge Permit subject to terms and conditions provided herein.

- (c) Permit Conditions. Wastewater Discharge Permits shall be expressly subject to all provisions of these regulations and all other regulations, user charges, and fees established by the City. The conditions of Wastewater Discharge Permits shall be uniformly enforced by the Manager in accordance with these regulations, and applicable state and federal regulations. Permits may contain the following:

- (1) the unit charge or schedule of user charges and fees for the wastewater to be discharged to a City sewer;
 - (2) the average and maximum wastewater constituents and characteristics, including BMPs, based on applicable pretreatment standards;
 - (3) limits on rate and time of discharge or requirements for flow regulations and equalization;
 - (4) requirements for installation of inspection and sampling facilities;
 - (5) pretreatment requirements;
 - (6) specifications for monitoring programs which may include sampling locations, frequency and method of sampling, number, types and standards for tests, and reporting schedule required by the POTW and in accordance with self-monitoring requirements in 403.8(f)(1)(iii)(B)(4);
 - (7) requirements for submission of technical reports or discharge reports, including, but not limited to the reports described in Section 4.01 of these regulations, or any report required by 40 CFR 403.12;
 - (8) requirements for maintaining plant records relating to wastewater discharge as specified by the City, and affording City access thereto;
 - (9) mean and maximum mass emission rates, or other appropriate limits when incompatible pollutants (as defined by Section 1.02(x)) are proposed or present in the user's wastewater discharge;
 - (10) requirements to control Slug Discharge, if determined by the Manager to be necessary.
 - (11) the process for seeking a waiver from monitoring for a pollutant neither present nor expected to be present in the Discharge in accordance with Section 4.01(b) and any granted monitoring waiver.
 - (12) other conditions as deemed appropriate by the City to ensure compliance with these regulations.
- (d) Duration of Permits. Permits shall be issued for a specified time period, not to exceed five years. A permit may be issued for a period less than one year or may be stated to expire on a specific date. The terms and conditions of the permit may be subject to modification and change by the City during the life of the permit as limitations or requirements as identified in Section 2.08 are modified. The user shall be informed of any proposed changes in his or her permit at least 30 days prior to the effective date

of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance if, in the City's opinion, the 30 days notice is not sufficient, except as changes apply to categorical industrial users (CIUs) subject to pretreatment standards for existing sources (PSES). CIUs subject to Pretreatment Standard for New Sources (PSNS) must achieve compliance upon discharge.

- (e) Prohibition on Transfer of a Permit. Wastewater Discharge Permits are issued to a specific user for a specific operation. A Wastewater Discharge Permit shall not be reassigned, transferred, or sold to a new owner, new user, different premises, or a new or changed operation.
- (f) Revocation of Permit. Any user who does any of the following or violates any conditions of these regulations, or applicable state and federal regulations is subject to permit revocation:
 - (1) failure of the user to factually report the wastewater constituents and characteristics of his or her discharge;
 - (2) failure of the user to report and obtain prior written approval for significant changes in operations, wastewater constituents or characteristics, or flow rates;
 - (3) refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or
 - (4) violations of conditions of the permit.

4.03 Monitoring Facilities. The City may require the user to construct at his or her own expense, monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer or internal drainage systems and may also require sampling or metering equipment to be provided, installed, and operated at the user's expense. The monitoring facility should normally be situated on the user's premises; but the City may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street or sidewalk area with the approval of the public agency having jurisdiction over that street or sidewalk, and located so that it will not be obstructed by landscaping or parked vehicles.

If the monitoring facility is inside the user's fence, there shall be accommodations to allow access for City personnel, such as a gate secured with a City lock. There shall be ample room in or near such sampling manhole to allow accurate sampling and compositing of samples for analysis. The manhole, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.

Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the City's requirements and all applicable local agency construction standards and specifications. Construction shall be completed within 90 days following written

notification by the City unless a time extension is otherwise granted by the City.

4.04 Inspection and Sampling. The City may inspect the facilities of any user to verify compliance with these regulations. Persons or occupants of premises where wastewater is created or discharged shall allow the City or its representative ready access at all reasonable times to all parts of the premises for the purposes of inspection or sampling or in the performance of any of their duties. The City shall have the right to set up on the user's property such devices as are necessary to conduct sampling or metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into their premises, the user shall make necessary arrangements with their security personnel so that, upon presentation of suitable identification, personnel from the City will be permitted to enter without delay for the purposes of performing their specific responsibilities.

4.05 Pretreatment. Users shall make wastewater acceptable under the limitations established herein before discharging to any City sewer. Any facilities required to pretreat wastewater to a level acceptable to the City shall be provided and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the City for review, and shall be acceptable to the City before construction of the facility. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent wastewater acceptable to the City under the provisions of these regulations. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable to the City. In accordance with Public Works Policy Memo 5.11, the City may require installation of a grease control device when in the opinion of the City, such a device is necessary to prevent excessive discharge of oil and grease into the City sewer by the user.

4.06 Protection from Accidental Discharge. Each user shall provide protection from accidental discharge of prohibited materials or other wastes regulated by these regulations. Such facilities shall be provided and maintained at the user's expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the City for review, and shall be acceptable to the City before construction of the facility.

The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to provide the protection necessary to meet the requirements of this section.

4.07 Confidential Information. All information and data on a user obtained from reports, questionnaires, permit application, permits, and monitoring programs, and from inspections, shall be available to the public or other governmental agency without restriction unless the user specifically requests it not be and is able to demonstrate to the satisfaction of the City that the release of information would divulge information, processes, or methods which would be detrimental to the user's competitive position.

When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made

available to the U.S. Environmental Protection Agency, the State Water Resources Control Board and the Regional Water Quality Control Boards, which are bound by the same confidentiality rules as the City. As outlined in 40 CFR Parts 403.8, and 403.14 and under section 308 of the Clean Water Act, all information contained in an Industrial User's file and/or submitted by an Industrial User will be available at all times to the U.S. Environmental Protection Agency.

Information accepted by the City as confidential shall not be transmitted to any person or entity unless the City is required to do so by law and upon notification to the user, except in emergency or extraordinary circumstances. The notification provision of this section shall not be construed to require the consent or approval of the user before such information is released.

Wastewater constituents and characteristics will not be recognized as confidential information.

The City shall not be liable in damages to any permit applicant or user for any negligent disclosure of any trade secret furnished to the City.

4.08 Special Agreements. Special agreements and arrangements between the City and any persons or agencies may be established when, in the opinion of the City, unusual or extraordinary circumstances compel special terms and conditions. Under no circumstances, however, will any special agreement or arrangement be established which contravenes any federal pretreatment regulation, categorical pretreatment standard, or any other provision of federal law.

4.09 Certification Statements

- (a) Certification of Permit Applications, User Reports and Initial Monitoring Waiver—The following certification statement is required to be signed and submitted by users submitting permit applications in accordance with Section 4.02(b); users submitting baseline monitoring reports under Section 4.01(c); users submitting reports on compliance with the categorical pretreatment standard deadlines under Section 4.01(e); users submitting periodic compliance reports required by Section 4.01(a) – (g), and users submitting an initial request to forego sampling of a pollutant on the basis of Section 4.01(b)(4). The following certification statement must be signed by an Authorized Representative as defined in Section 1.02(b):

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

- (b) Annual Certification for Non-Significant Categorical Industrial Users. A facility

determined to be a Non-Significant Categorical Industrial User by the Manager pursuant to Section 1.02(ww)(5) must annually submit the following certification statement signed in accordance with the signatory requirements in Section 1.02(b). This certification must accompany an alternative report required by the Manager:

Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical pretreatment standards under 40 CFR _____, I certify that, to the best of my knowledge and belief that during the period from _____, _____ to _____, _____ [months, days, year]:

(1) The facility described as _____ [facility name] met the definition of a Non-Significant Categorical Industrial User as described in 1.02(ww)(5);

(2) The facility complied with all applicable pretreatment standards and requirements during this reporting period; and

(3) the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period.

This compliance certification is based on the following information.

- (c) Certification of Pollutants Not Present. Users that have an approved monitoring waiver based on Section 4.01(b) must certify on each report with the following statement that there has been no increase in the pollutant in its wastestream due to activities of the user. The certification statement signed in accordance with the signatory requirements in Section 1.02(b).

Based on my inquiry of the person or persons directly responsible for managing compliance with the pretreatment standard for 40 CFR _____ [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of _____ [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under Section 4.01(a).

4.10 Retention of Records. Users subject to the reporting requirements of this ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this ordinance, any additional records of information obtained

pursuant to monitoring activities undertaken by the user independent of such requirements, and documentation associated with BMPs established under Section 2.08.4. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years, with the exception of Dental Amalgam-regulated facilities, where records have to be retained for five (5) years as listed in Section 2.15.2. This period shall be automatically extended for the duration of any litigation concerning the user, the City, the State Water Resources Control Board or their Regional Boards, or the EPA, or where the user has been specifically notified of a longer retention period by the Manager. All such records shall be made available for inspection and copying by a duly authorized representative of the City or any other governmental entity having jurisdiction.

4.11 Public Notification of Dischargers Found to be in Significant Non-Compliance. At an interval of not less than once per year, the City will publish the identities of any user(s) which is (are) found to be in significant non-compliance of any national pretreatment standard, discharge limitation or prohibition, or any other requirement of these regulations. The definition of significant non-compliance shall be as specified in 40 CFR 403.8(f)(2)(viii). The publication shall occur in a newspaper of general circulation that provides meaningful notice within the City.

4.12 Notification of Changed Conditions. Each user must notify the Manager of any significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least thirty (30) days before the change.

- (a) The Manager may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 4.02(b) of this ordinance.
- (b) The Manager may issue an individual wastewater discharge permit or modify an existing wastewater discharge permit under Section 4.02 of this ordinance in response to changed conditions or anticipated changed conditions.

4.13 Reports of Potential Problems.

- (a) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, a need for a bypass, a Slug Discharge or Slug Load, that might cause potential problems for the POTW, the user shall immediately telephone and notify the Manager of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.
- (b) Within five (5) days following such discharge, the user shall, unless waived by the Manager, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which might be incurred as a result of damage to the POTW, natural resources, or

any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this ordinance.

- (c) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees who to call in the event of a discharge described in paragraph (a), above. Employers shall ensure that all employees, who could cause such a discharge to occur, are advised of the emergency notification procedure.
- (d) Significant Industrial Users are required to notify the Manager immediately of any changes at its facility affecting the potential for a Slug Discharge.

4.14 Notification of Hazardous Waste Discharge.

- (a) Any industrial user discharging any substance which, if otherwise disposed of, would be a hazardous or acutely hazardous waste under 40 CFR 261, shall comply with the reporting requirements of 40 CFR 403.12(p)(1) and (3) unless exempted under the provisions of 40 CFR 403.12(p)(2).
- (b) In the case of any notification made under paragraph (a) above, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical, pursuant to 40 CFR 403.12(p)(4). The City may accept a copy of a hazardous waste reduction or minimization plan as otherwise required by law.

4.15 Best Management Practices. The City may require submission of information to evaluate the implementation of and/or require the implementation of (BMPs) as described in Section 2.08.4.

Chapter 5

WASTEWATER CHARGES AND FEES

5.01 Schedule of Charges and Fees. The City's schedule of charges and fees complies with the revenue requirements of the State Clean Water Grant Program. Charges and fees are determined in a manner consistent with regulations of the grant program.

5.02 Classification of Users. Users shall be classified by assigning each one to a "User Classification" category according to the principal activity conducted on the user's premises and appropriate non-industrial classifications as determined by the City. The purpose of such classification is to facilitate the regulation of wastewater discharges based on wastewater constituents and characteristics to provide an effective means of source control, and to establish a system of user charges and fees which will ensure an equitable recovery of the City's cost.

5.03 Types of Charges and Fees. The charges for each wastewater constituent and characteristic shall be established by the City and set forth in the City's schedule of charges and fees, which may include, but not be limited to:

- (a) user classification charges;
- (b) fees for monitoring;
- (c) fees for permit applications;
- (d) appeal fees; or
- (e) charges and fees based on wastewater constituents and characteristics to include industrial cost recovery provisions of the Federal Act.

5.04 Determination of User Charges and Fees. When user classification charges are established, they shall be based upon a minimum basic charge for each premise, computed on the basis of the characteristics of wastewater from a domestic premise. The quantitative values for the characteristics, including carbonaceous biochemical oxygen demand (CBOD), suspended solids (SS), and volume of wastewater (flow), are described in the City's Master Fee Schedule.

The charges for all classifications of users other than the basic domestic premise shall be based upon the relative difference between the average wastewater constituents and characteristics of that classification as related to those of a domestic premise.

The charges and fees established for unclassified users shall be based upon the measured or estimated constituents and characteristics of that user which may include, but not be limited to, CBOD, SS, and volume.

Chapter 6

ENFORCEMENT

6.01 Enforcement Response Plan. Enforcement of pretreatment violations will generally be in accordance with the City's Enforcement Response Plan. However, the Manager may take other action against any user when the circumstances warrant. Further, the Manager is empowered to take more than one enforcement action against any noncompliant user.

6.02 Notification of Discharge. Users shall notify the City immediately upon accidentally discharging wastes in violation of these regulations and/or discharging any slug loading, to enable countermeasures to be taken by the City to minimize damage to the City sewer, treatment facility, treatment processes, and the receiving waters.

This notification shall be followed by a detailed written statement describing the causes of the accidental discharge and the measures being taken to prevent future occurrence, to be received by the City within five calendar days of the date of occurrence.

Such notification will not relieve users of liability for any expense, loss, or damage to the sewer system, treatment plant, or treatment process, or for any fines imposed on the City on account thereof under section 13350 of the California Water Code, or for violations of section 5650 of the California Fish and Wildlife (previously known as California Fish and Game) Code.

6.03 Warning Notice. The Manager may issue a warning notice as the first level of written enforcement. Warning notices are written letters sent to industrial users in response to most initial instances of sampling violations, exceedances of local and federal limits, late reports that are less than 45 days late, and other minor violations. The industrial user shall respond in writing within fifteen (15) days of the date of the warning letter unless otherwise indicated by the Manager. This response shall include, at a minimum, an explanation of the reasons/causes of the violation and corrective actions to be implemented by the industrial user to prevent future violations.

6.04 Notification of Violation (NOV). When the Manager finds that a user has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, Manager may serve upon that user a written Notice of Violation. Within fifteen (15) days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to Manager. Submission of such a plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation.

6.05 Administrative Citation. Administrative citations may be issued for violations of the City of Hayward Municipal Code at the discretion of the Manager. If violations listed on a citation are not corrected within a specified time, fines may be assessed. Fines escalate with each successive citation for uncorrected violations. Violators may appeal an administrative citation and request an administrative hearing per the process defined in Section 7.09 of this document.

6.06 Administrative Order. An administrative consent, show cause, or compliance order may be issued to direct an IU to take a particular step in order to regain compliance. These orders are handled on a case-by-case basis, and there is no standard time frame as to when they are issued.

- (a) Consent Orders. The Manager may enter into Consent Orders, assurances of compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents shall include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as administrative fines issued pursuant to Section 7.09 of this ordinance and shall be judicially enforceable.
- (b) Show Cause Hearing. The Manager may order a user which has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, to appear before the Manager and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least fifteen (15) days prior to the hearing. Such notice may be served on any Authorized Representative of the user as defined in Section 1.02(b). A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.
- (c) Compliance Orders. When the Manager finds that a user has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the Manager may issue an order to the user responsible for the discharge directing that the user come into compliance within a specified time. If the user does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

6.07 Issuance of Cease and Desist Orders. When the City finds that a discharge of wastewater has taken place in violation of prohibitions or limitations of these regulations, or the provisions of a Wastewater Discharge Permit, the Manager may issue an order to cease and desist, and direct that

those not complying with such prohibitions, limits, requirements, or provisions:

- (a) comply forthwith;
- (b) comply in accordance with a time schedule set forth by the City; or
- (c) take appropriate remedial or preventive action in the event of a threatened violation.

6.08 Submission of Time Schedule. When the City finds that a discharge of wastewater has been taking place in violation of prohibitions or limitations prescribed in these regulations, or wastewater source control requirements, effluent limitations or pretreatment standards, or the provisions of a Wastewater Discharge Permit, the City may require the user to submit for approval, with such modifications as it deems necessary, a detailed time schedule of specific actions which the user shall take in order to prevent or correct a violation of the requirements.

6.09 Appeals. Any user, permit applicant, or permit holder affected by any decision, action, or determination, including cease and desist orders made by the Manager, interpreting or implementing the provisions of these regulations or in any permit issued herein, may file with the Manager a written request for reconsideration within ten days of such decision, action, or determination, setting forth in detail the facts supporting the user's request for reconsideration.

If the ruling made by the Manager is unsatisfactory to the person requesting reconsideration, he or she may, within ten days after notification of City action, file a written appeal to the City Council. The written appeal shall be heard by the City Council, within 30 days of its filing date. A final ruling on the appeal shall be rendered within 10 days of the close of the hearing. The Manager's decision, action, or determination shall remain in effect during such period of reconsideration.

6.10 Notices to Employees. In order that employees of users are informed of City requirements, users shall make available to their employees copies of these regulations together with such other wastewater information and notices directed toward more effective water pollution control which may be periodically furnished by the City. A notice shall be furnished and permanently posted on the user's bulletin board advising employees whom to call in case of an accidental discharge in violation of these regulations, as listed below:

Weekdays, 8 AM – 5 PM:	Water Pollution Source Control, 510-881-7900
Weekdays after 5 PM, and Weekends:	Water Pollution Control Facility, 510-293-5398
Police, Fire, or Medical Emergencies:	911

Chapter 7

ABATEMENT

7.01 Public Nuisance. Discharge of wastewater in any manner in violation of these regulations or of any order issued by the Manager as authorized by these regulations, is hereby declared a public nuisance and shall be corrected or abated as directed by the Manager. Any person creating a public nuisance shall be subject to provisions of City codes or ordinances governing such nuisance.

7.02 Injunction. The City may petition the superior court for the issuance of preliminary or permanent injunctive relief, or both, as may be appropriate, for noncompliance by users with pretreatment standards and requirements. Noncompliance relates both to discharge and non-discharge violations.

7.03 Damage to Facilities. When a discharge of wastes causes an obstruction, damage, or any other impairment to City facilities, the City may assess a charge against the user for the work required to clean or repair the facility and add such charge to the user's charges and fees.

7.04 Civil Penalties. Any person who violates any provision of these regulations or permit conditions, or who discharges wastewater which causes pollution, or who violates any cease and desist order, prohibition, effluent limitation, national performance, pretreatment or toxicity standard, shall be liable civilly to penalties imposed by the City for the violation(s). The City Attorney, upon order of the City Council, shall petition the superior court to impose, assess, and recover such sums as may be applicable. In addition, the City may refer any violations of these regulations to the office of the Alameda County District Attorney for civil prosecution under any applicable statute or provision of law.

7.05 Criminal Penalties. Any person who violates any provision of these regulations, or of a permit or a cease and desist order issued pursuant to these regulations, is guilty of a public offense. The classification of such public offense and the punishment therefor shall be as provided by regulations of the City.

7.06 Falsifying Information. Any person who knowingly makes any false statement, representation, record, report, plan, or other document filed with the City, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under these regulations, shall be punished in accordance with the City codes or ordinances governing such falsifications. The City Attorney, upon order of the City Council, shall petition the Superior Court to impose, assess, and recover such sums as may be applicable.

7.07 Termination of Service. The City may revoke any Wastewater Discharge Permit, or terminate or cause to be terminated wastewater service to any premises, if a violation of any provision of these regulations is found to exist or if a discharge of wastewater causes or threatens to cause a condition of contamination, pollution, or nuisance as defined in these regulations. Furthermore, whenever any discharge of wastewater is deemed by the City to be an imminent and significant threat to the operation of the wastewater treatment plant, the health and safety of City personnel or the public, or

the quality of the waters of the state, the City may, without prior notice and by whatever means or combination of means available, terminate wastewater service to any premises. This provision is in addition to other statutes, rules, or regulations, authorizing termination of service for delinquency in payment.

7.08 Legal Authority to Protect POTW. In accordance with section 54739 of the California Government Code, the City may require any of the following:

- (a) Pretreatment of any industrial waste which the City determines is necessary in order to meet standards established by the federal or California state government or other regulatory agencies or which the City determines is necessary in order to protect its treatment works or the proper and efficient operation thereof or the health and safety of its employees or the environment.
- (b) The prevention of the entry of such industrial waste into the collection system and treatment works.
- (c) The payment of excess costs incurred by the City as a result of entry of such industrial waste into the collection system and treatment works.

7.09 Administrative Fine Procedure.

- (a) In accordance with section 54740.5 of the California Government Code, the City may issue an administrative complaint to any person who violates any requirement adopted or ordered by the City pursuant to paragraphs (a) and (b) of Section 7.08. The administrative complaint shall allege the act or failure to act that constitutes the violation of the City's requirements, the provisions of law authorizing civil liability to be imposed, and the proposed civil penalty.
- (b) The administrative complaint shall be served by personal delivery or certified mail on the person subject to the City's discharge requirements, and shall inform the person served that a hearing shall be conducted within 60 days after the person has been served. The hearing shall be before the Manager or his or her designee, hereafter "hearing officer". The person who has been issued an administrative complaint may waive the right to a hearing, in which case the City shall not conduct a hearing. A person dissatisfied with the decision of the hearing officer may appeal to the City Council within 30 days of notice of the hearing officer's decision.
- (c) If after the hearing or appeal it is found that the person has violated reporting or discharge requirements, the hearing officer may assess a civil penalty against that person. In determining the amount of the civil penalty, the hearing officer or City Council may take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the economic benefit derived through any noncompliance, the nature and persistence of the violation, the length of time over which the violation occurs and corrective action, if any, attempted or taken

by the discharger.

- (d) Civil penalties may be imposed by the City as follows:
- (1) In an amount which shall not exceed \$2,000 for each day for failing or refusing to furnish technical or monitoring reports.
 - (2) In an amount which shall not exceed \$3,000 for each day for failing or refusing to timely comply with any compliance schedule established by the City.
 - (3) In an amount which shall not exceed \$5,000 per violation for each day for discharges in violation of any waste discharge limitation, permit condition, or requirement issued or adopted by the City.
 - (4) In an amount which does not exceed \$10 per gallon for discharges in violation of any suspension, cease and desist order or other orders, or prohibition issued, reissued, or adopted by City.
 - (5) The amount of any civil penalties imposed under this section which have remained delinquent for a period of 60 days shall constitute a lien against the real property of the discharger from which the discharge originated resulting in the imposition of the civil penalty. The lien provided herein shall have no force and effect until recorded with the county recorder and when recorded shall have the force and effect and priority of a judgment lien and continue for 10 years from the time of recording unless sooner released and shall be renewable in accordance with the provisions of sections 683.110 to 683.220, inclusive, of the Code of Civil Procedure.
- (e) All monies collected under this section shall be deposited in a special account of the City and shall be made available for the monitoring, treatment, and control of discharges into the City's sewer system or for other mitigation measures.
- (f) Unless appealed, orders setting administrative civil penalties shall become effective and final upon issuance thereof, and payment shall be made within 30 days. Copies of these orders shall be served by personal service or by registered mail upon the party served with the administrative complaint and upon other persons who appeared at the hearing and requested a copy.
- (g) The City may, at its option, elect to petition the Superior Court to confirm any order establishing civil penalties and enter judgment in conformity therewith in accordance with the provisions of sections 1285 to 1287.6, inclusive, of the Code of Civil Procedure.
- (h) No penalties shall be recoverable under this section for any violation for which civil

liability is recovered under Section 7.04.

- (i) Any party aggrieved by a final order issued by the City Council under this section, after granting review of the order of a hearing officer, may obtain review of the order of the Council in the Superior Court by filing in the court a petition for writ of mandate within 30 days following the service of a copy of the decision and order issued by the Council. Any party aggrieved by a final order of a hearing officer issued under this section, for which the Council denies review, may obtain review of the order of the hearing officer in the Superior Court by filing in the court a petition for writ of mandate within 30 days following service of a copy of a decision and order denying review of the Council.
- (j) If no aggrieved party petitions for writ of mandate within the time provided by this section, an order of the Council or a hearing officer shall not be subject to review by any court or agency, except that the Council may grant review on its own motion of an order issued under this section after the expiration of the time limits set by that section.
- (k) The evidence before the court shall consist of the record before the Council, including the hearing officer's record, and any other relevant evidence which, in the judgment of the court, should be considered to effectuate and implement policies of Title 5, Division 2 of the Government Code. In every such case the court shall exercise its independent judgment on the evidence.
- (l) Except as otherwise provided in this section, subdivisions (e) and (f) of section 1094.5 of the California Code of Civil Procedure shall govern proceedings pursuant to this section.

Chapter 8

SEVERABILITY

If any provision of these regulations or the application to any person or circumstances is held invalid, the remainder of the regulations or the application of such provisions to other persons or other circumstances shall not be affected.”

Section 2. SEVERABILITY. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 3. EFFECTIVE DATE. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

IN COUNCIL INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ___ day of _____, 2013, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the ___ day of _____, 2013, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ATTEST: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

ORDINANCE NO. 13-XX

AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 3,
SECTION 400, APPENDIX "A" OF THE HAYWARD
MUNICIPAL CODE BY ADOPTING THE REVISED
WASTEWATER DISCHARGE REGULATIONS

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HAYWARD
DOES ORDAIN AS FOLLOWS:

Section 1. Upon the effective date of this ordinance, Chapter 11, Article 3, Section
400, Appendix "A" of the Hayward Municipal Code is hereby amended by adopting the revised
Wastewater Discharge Regulations to read in full as follows:

ARTICLE 3

SECTION 400

APPENDIX "A"

APPENDIX "A"

WASTEWATER DISCHARGE REGULATIONS
OF
THE CITY OF HAYWARD

(1997)

Chapter 1

GENERAL PROVISIONS

1.01 ~~1.01~~ Purpose and Policy. - These Wastewater Discharge Regulations impose requirements for discharges into the wastewater collection and treatment systems and enable the City of Hayward ~~Agency~~ to comply with the administrative provisions of the Federal Clean Water Grant Regulations, Act, National Pollutant Discharge Elimination System permit conditions ~~the water quality requirements~~ set by the Regional Water Quality Control Board ~~and including~~ the applicable effluent limitations, national standards of performance, toxic and pretreatment effluent standards, and any other discharge criteria which are required or authorized by state or federal law, and to derive the maximum public benefits by regulating the quality and quantity of wastewater discharged into the East Bay Dischargers Authority system. -These regulations provide a means for determining wastewater volumes, the setting of user charges and fees for the equitable distribution of costs to all users, and ~~the~~ issuance of permits to certain users. -Revenues derived from the application of these regulations shall be used to defray the ~~City's Agency's~~ costs of operating and maintaining adequate

wastewater collection and treatment systems and to provide sufficient funds for capital outlay, bond service costs, capital improvements, and depreciation.

1.02 Definitions. For the purpose of this article, certain words and phrases are defined and shall be construed as set out in this section. Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application. Terms herein shall be consistent with words and definitions in the Code of Federal Regulations Title 40 (40 CFR), Parts 136 and 403, the Porter-Cologne Water Quality Act, and the Federal Water Pollution Control Act as amended in 1972. Words, phrases or terms not specifically defined herein, and having a technical or specialized meaning shall be defined as set forth in 40 CFR Parts 136 and 403.

~~(a) — Amalgam~~

(a) . An alloy containing mercury, tin, silver, or copper that is used in dentistry to restore teeth.

(b) Authorized or Duly Authorized Representative of the User.

(1) If the User is a corporation:

(i) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(ii) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) If the User is a partnership or sole proprietorship: a general partner or proprietor, respectively.

(3) If the User is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

(4) The individuals described in paragraphs 1 through 3, above, may designate a Duly Authorized Representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall

operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City. If an authorization of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of paragraphs 1 through 3 of this section shall be submitted to the City prior to or together with any reports to be signed by an authorized representative.

~~1.02 Definitions. Unless otherwise defined herein, terms shall be as adopted in the latest edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation.~~

~~(a) Agency. The City of Hayward.~~

~~(b) Authority. The East Bay Dischargers Authority.~~

~~(c) — (e) Beneficial Uses. — Uses of the waters of the state that may be protected against quality degradation include, but are not necessarily limited to, domestic, municipal, agricultural and industrial supply, power generation, recreation, aesthetic enjoyment, navigation and the preservation and enhancement of fish, wildlife and other aquatic organisms, resources or reserves, and other uses, both tangible or intangible, as specified by federal or state law.~~

(d) Best Management Practices or BMPs. Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Chapter 2. BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. BMPs also include alternative means (i.e., management plans) of complying with, or in place of certain established categorical pPretreatment sStandards and effluent limits.

~~(b) Best Management Practice or BMP. Any procedure, action, program, or technology, which controls, prevents, or reduces the amount of pollutants discharged, or which eliminates a specific discharge to the City sewer system.~~

~~(c) — (d) Building Sewer. — A sewer conveying wastewater from the premises of a user to the Citycommunity sewer.~~

~~(f) — (e) Bypass. — The intentional diversion of waste streams from any portion of a user'suser's treatment facility.~~

(g) Carbonaceous Biochemical Oxygen Demand or CBOD. The quantity of oxygen utilized in the biochemical oxidation of organic matter in the presence

of a nitrification inhibitor under standard laboratory procedures for five (5) days at 20 degrees centigrade, usually expressed as a concentration (e.g., mg/l).

(h) Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. section 1317) that apply to a specific category of uUsers and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

(i) Categorical Industrial User. An Industrial User subject to a categorical pPretreatment sStandard or categorical sStandard.

~~City. The City of Hayward.~~

(j) City. The City of Hayward.

~~(k) City (f) Community Sewer. -A sewer owned and operated by the City of Hayward and tributary to the treatment facility operated by the City. Agency, a city, or other public agency tributary to a treatment facility operated by the Agency or the Authority.~~

(l) (g) Compatible Pollutant. -Biochemical oxygen demand (BOD), suspended solids (SS), pH and fecal coliform bacteria, plus additional pollutants identified in the City's Agency's National Pollutant Discharge Elimination System (NPDES) permit if the publicly owned treatment works was designed to treat such pollutants, and in fact does remove such pollutants to a substantial degree. As required by the NPDES permit, the City analyzes carbonaceous biochemical oxygen demand (CBOD), a component of total BOD.

(m) Composite Sample. A sample which is collected manually or automatically, and discretely or continuously, based on time or flow intervals.

(n) (h) Contamination. - An impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. -Contamination shall include any equivalent effect resulting from the disposal of wastewater, whether or not waters of the state are affected.

(o) Daily Maximum Limit. The maximum allowable discharge limit of a pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where Daily Maximum Limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

(p) Direct Discharge. The discharge of treated or untreated wastewater directly to the Waters of the State of California.

(q) Domestic Sewage. Liquid and waterborne wastes derived from the ordinary living processes, free from industrial wastes, and of such character as to permit satisfactory disposal, without special treatment, into the City's sewerage system.

(r) East Bay Dischargers Authority. The joint powers of authority comprised of the City of Hayward, the City of San Leandro, the Oro Loma Sanitary District, the Castro Valley Sanitary District, and the Union Sanitary District.

(s) EPA. The United States Environmental Protection Agency or, where appropriate, a duly authorized official of said agency.

(t) Existing Source. Any source of discharge that is not a "New Source."

~~(i) Critical User. A user who is required to obtain a permit, as defined in section 4.02.1.~~

~~(u) (j) Federal Act, Clean Water Act, or Act.— The Federal Water Pollution Control Act, PL 92-500, and any amendments thereto; as well as any guidelines, limitations, and standards promulgated by the Environmental Protection Agency (EPA) pursuant to the Act. Text of the original law and subsequent amendments are documented in 33 U.S. Code 1251.~~

(v) Grab Sample. A sample that is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed fifteen (15) minutes.

~~(w) (k) Holding Tank Waste.— Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum pump tank trucks.~~

~~(x) (l) Incompatible Pollutant. —Any pollutant which is not a compatible pollutant as defined in this section.~~

(y) Indirect Discharge or Discharge. The discharge or introduction of pollutants into the POTW from any nondomestic source regulated under Section 307(b) or (c) of the Act into the POTW.;

(z) Industrial User. All establishments engaged in producing, manufacturing, or processing operations, which result in the production and/or discharge into City sewers of industrial wastes; and all other establishments engaged in any activity resulting in the production and discharge to City sewers of industrial wastes.

(aa) Instantaneous Limit. The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

(bb) ~~—(m)—~~ Interference.— A discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

(1) ~~—(1)—~~ inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

(2) ~~—(2)—~~ therefore is a cause of a violation of any requirement of the POTW's~~POTW's~~ NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): -Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

(cc) Local Limit. Specific discharge limits developed and enforced by the City upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b).

(dd) ~~—(n)—~~ Manager. -The City Manager~~manager~~ or designated staff such as the Public Works Director and Water Pollution Source Control Administration of the City of Hayward~~Agency~~; or his or her designated representative;

(ee) ~~—(o)—~~ Mass Emission Rate. -The massweight of material discharged to the sewer system during a given time interval. -Unless otherwise specified, the mass emission rate shall be expressed as~~mean~~ pounds per day of a particular constituent or combination of constituents.

(ff) National Pollutant Discharge Elimination System or NPDES Permit. A permit issued pursuant to Section 402 of the Act.

(gg) ~~—(p)—~~ National Pretreatment Standard, Pretreatment Standard, or Standard.- Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307 (b) and (c) of the Act, which applies to industrial users. -This term includes prohibitive discharge limits established pursuant to 40 CFR 403.5.

(hh) New Source. Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section and subject to the terms outlined in 40 CFR 403.3(m).k).

- (ii) Nuisance. Anything which meets all of the following requirements:
- (1) is injurious to health or is indecent or offensive to the senses or an obstruction to the free use of property so as to interfere with the comfort or enjoyment of life or property, and
 - (2) which affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and
 - (3) occurs during, or as a result of, the treatment or disposal of waste.
- (jj) Pass Through. A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).
- (kk) Person. Any individual, partnership, firm, association, corporation, or public agency including the State of California and the United States of America.
- (ll) pH. A measure of the acidity or alkalinity of wastewater. pH is measured on a scale of 0 to 14, 0 being extremely acidic, 7 neutral, and 14 extremely alkaline. The pH corresponds to the logarithm (base 10) of the reciprocal concentration of hydrogen ions expressed in gram-ions per liter of solution.
- (mm) Phenols. Total hydroxyl derivatives ~~of Total hydroxy derivatives~~ of benzene and its condensed nuclei (including phenol, chlorinated phenols, nitrophenols and chlorinated cresols) identified in Table 1, Section 307 of the Act which are detectable by EPA approved methods.
- (nn) Pollutant. Any dredge spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.
- (oo) Pollution. An alteration of the quality of the waters of the state by waste to a degree which unreasonably affects such waters for beneficial use or facilities which serve such beneficial uses. Pollution may include contamination.
- (pp) Polychlorinated biphenyls (PCBs). Total PCBs detectable by EPA approved methods.
- (qq) Premises. A parcel of real estate including any improvements thereon which is determined by the City to be a single user for purposes of receiving, using, and paying for service.
- (rr) Pretreatment. The reduction of the amount of pollutants, the elimination of

pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a Publicly Owned Treatment Works. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by Section 2.10. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the Publicly Owned Treatment Works. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR 403.6(e).

(ss) Pretreatment Requirement. Any substantive or procedural requirement related to pretreatment, other than a national pretreatment standard, imposed on an Industrial User (IU).

(tt) Publicly Owned Treatment Works or POTW.—(q) Publicly Owned Treatment Works or "POTW". A treatment works as defined by section 212 of the Act, which is owned by a state or municipality (as defined by section 502(4) of the Act). -This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. -It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. -The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

(uu) —(r) POTW Treatment Plant.— That portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

(s) New Source. Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under section 307(e) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section and subject to the terms outlined in 40 CFR 403.3(k)(1).

(t) Nuisance. Anything which is injurious to health or is indecent or offensive to the senses or an obstruction to the free use of property so as to interfere with the comfort or enjoyment of life or property or which affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

(u) Pass Through. A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a

~~discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).~~

~~(v) Person. Any individual, partnership, firm, association, corporation, or public agency including the State of California and the United States of America.~~

~~(w) Pollution. An alteration of the quality of the waters of the state by waste to a degree which unreasonably affects such waters for beneficial use or facilities which serve such beneficial uses. Pollution may include contamination.~~

~~(x) Premises. A parcel of real estate including any improvements thereon which is determined by the Agency to be a single user for purposes of receiving, using, and paying for service.~~

~~(vv) (y) Severe Property Damage. Substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.~~

(ww) Significant Industrial User.

(1) All users for which federal categorical standards have been promulgated;

(2) Any user that discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, non-contact cooling and boiler blowdown wastewater);

(3) Any user that contributes a process waste stream which comprises five percent or more of the average dry weather hydraulic or organic (CBOD and SS) capacity of the POTW treatment plant;

(4) Any user that has a reasonable potential, in the opinion of the manager or the pretreatment program approval authority to significantly or adversely affect the POTW treatment plant.

(5) The City may determine that an Industrial User subject to categorical pPretreatment sStandards is a Non--Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the pPretreatment sStandard) and the following conditions are met:

(i) The Industrial User, prior to the City's finding, has consistently complied with all applicable categorical pPretreatment sStandards

and Requirements;

- (ii) The Industrial User annually submits the certification statement required in Section 4.09(b), together with any additional information necessary to support the certification statement; and
 - (iii) The Industrial User never discharges any untreated concentrated wastewater.
- (6) Any user classified as a significant industrial user under the above definition, except users for which federal categorical pretreatment standards have been promulgated, may be de-classified as a significant industrial user if, in the opinion of the City, the user no longer has a reasonable potential for adversely affecting the collection and/or treatment system or for violating any pretreatment regulations.
- (xx) Significant Noncompliance. An industrial user is in significant noncompliance if its discharge meets one or more of the following criteria:
- (1) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken for the same pollutant parameter during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 CFR 403.3(l);
 - (2) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR 403.3(l) multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil and grease; and 1.2 for all other pollutants except pH);
 - (3) Any other violation of a pretreatment standard or requirement as defined by 40 CFR 403.3(l), ~~which may include a violation of Best Management Practices (BMPs), (daily maximum limits, long-term average, instantaneous limit, or narrative standard,)~~ that the City determines has caused, alone or in combination with other discharges, interference or pass-through (including endangering the health of POTW personnel or the general public);
 - (4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under authority of 40 CFR 403.8(f)(1)(vi)(B) to halt or prevent such a discharge;
 - (5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

(6) Failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(7) Failure to accurately report noncompliance;

(8) Any other violation or group of violations which the City determines will adversely affect the operation or implementation of the local pretreatment program.

(yy) Slug Discharge. Any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause Interference or Ppass tThrough, or in any other way violate the POTW's regulations, local limits or pPermit conditions. Also, any discharge which, in concentration or quantity of flow, exceeds for any period more than ten times the average 24-hour concentration or flow rate during normal operation

(zz) Storm Water. Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snow melt.

(aaa) Storm Sewer. A sewer which carries storm and surface waters and drainage, but which excludes sewage and industrial waste.

(bbb) Total Suspended Solids or/ Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and that is removable by laboratory filtering. The term "Total Suspended Solids" is synonymous with" "Suspended Solids".

(ccc) ~~(z)~~ Unpolluted Water.- Water to which no constituent has been added, either intentionally or accidentally, which would render such water unacceptable to the CityAgency having jurisdiction thereof for disposal to storm or natural drainages or directly to surface waters.

(ddd) Unclassified ~~(aa)~~ User. A user whose discharge does not correspond to any UCC because of variations in wastewater constituents or treatment costs.

(eee) User. A source of indirect. Any person that discharges, causes, or permits the discharge of wastewater into a Citycommunity sewer.

(fff) User Classification Code or UCC. Code designation assigned to commercial and industrial users based on their wastewater discharge strength and characteristics in comparison with domestic wastewater.

~~(bb) User Classification. A classification of user based on the latest edition of the Standard Industrial Classification (SIC) Manual prepared by the Executive Office of Management and Budget.~~

(ggg) ~~(cc)~~ Waste. -Includes sewage and any and all other waste substances,

liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation of whatever nature, including such waste placed within containers of whatever nature prior to, and for purposes of, disposal.

~~(hh)~~ ~~(dd)~~ Wastewater. Liquid. Waste and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed~~discharged into or permitted to the POTW~~enter a City~~community sewer.~~

(iii) Wastewater Constituents and Characteristics.— The individual chemical, physical, bacteriological and radiological parameters, including volume and flow rate and such other parameters that serve to define, classify or measure the contents, quality, quantity, and strength of wastewater.

(jii) Wastewater Discharge Permit or Permit. A legal document used as a control mechanism to ensure compliance with regulations that grants revocable permission to discharge wastewater to the sanitary sewer.

(kkk) Water Quality Requirements. Requirements for the City’s treatment plant effluent established by the NPDES permit, or by State or Federal regulatory agencies. Water quality requirements include effluent limitations and waste discharge standards, limitations, or prohibitions which may be established or adopted by State or Federal laws or regulatory agencies.

~~(ee)~~—

(lll) ~~(ff)~~ Waters of the State. -Any water, surface or underground, including saline waters within the boundaries of the state.

(mmm) Abbreviations. The following abbreviations shall have the designated meaning:

<u>CBOD</u>	<u>–</u>	<u>Carbonaceous Biological Oxygen Demand</u>
<u>CFR</u>	<u>–</u>	<u>Code of Federal Regulations</u>
<u>IU</u>	<u>–</u>	<u>Industrial User</u>
<u>L</u>	<u>–</u>	<u>Liter</u>
<u>mg</u>	<u>–</u>	<u>Milligrams</u>
<u>mg/L</u>	<u>–</u>	<u>Milligrams per liter</u>
<u>NPDES</u>	<u>–</u>	<u>National Pollutant Discharge Elimination System</u>
<u>SIC</u>	<u>–</u>	<u>Standard Industrial Classification</u>
<u>TSS</u>	<u>–</u>	<u>Total Suspended Solids</u>

1.03 ~~1.03 Analytical and Sampling and Analysis Methods~~Methodology and Procedures.

~~—Analytical Requirements. Analyses, including The methods (a) The method and procedures utilized for all sampling techniques, performed and/or analyses which are reported under the requirements of these regulations shall be as specified by the provisions of 40 CFR Parts 136 and 403.12.136, including amendments thereto.~~

~~—(b) The methods and procedures utilized for all analyses which are sampling performed and/or reported under the requirements of these regulations shall be as specified by the provisions of 40 CFR Parts Part 136 and 403.12.~~

~~(a) All required sampling must be representative of conditions during the reporting period.~~

~~(b) All monitoring results obtained pursuant to this section must be submitted to the City, regardless of whether the City required such monitoring.~~

Replace (a) and (b) by:

(a) Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR part 136 and amendments thereto, and 40 CFR Part 403.12. Where 40 CFR part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA Administrator determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the Manager POTW or other parties, approved by the EPA Administrator.

(b) Sample Collection. Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.

(i) Except as indicated in Section 1.03(b)(ii) and (iii) below, the User must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Manager. Where time-proportional composite sampling or grab sampling is authorized by the City, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenolsphenol, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the

samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the City, as appropriate. In addition, grab samples may be required to show compliance with Instantaneous Limits.

(ii) Samples for oil and grease, temperature, pH, cyanide, ~~total phenolsphenol~~, sulfides, and volatile organic compounds must be obtained using grab collection techniques.

(iii) For sampling required in support of baseline monitoring and 90-day compliance reports required in Section 4.01(c) and 4.01(e), a minimum of four (4) grab samples must be used for pH, cyanide, ~~total phenolsphenol~~, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Manager may authorize a lower minimum. For the reports required by paragraphs Section 4.01(a) (40 CFR 403.12(e) and 403.12(h)), the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance ~~by~~ with applicable ~~p~~retreatment ~~s~~Standards and ~~r~~Requirements.

(c) All monitoring results obtained pursuant to this section must be submitted to the City, regardless of whether the City required such monitoring.

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Chapter 2

REGULATIONS

2.01 ~~_____~~ 2.01 ~~Prohibitions on Discharge.~~ No person shall discharge to the City's ~~community~~ sewer system wastes which cause, threaten to cause, or are capable of causing, either alone or by interaction with other substances:

- (a) ~~_____~~ (a) ~~_____~~ a fire or explosion, including but not limited to discharges with a closed cup flashpoint of less than 140 ~~°FF~~ (60 ~~°C~~); (c);
- (b) ~~_____~~ (b) ~~_____~~ Pollutants which cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such discharges;
- (c) ~~_____~~ (c) ~~_____~~ Heat in amounts which will inhibit biological activity in the POTW resulting in Interference, but in no case heat in such quantities that the temperature at the POTW exceeds 40 °C (104 °F) unless the Approval Authority, upon request of the POTW, approves alternate temperature limits;
- (d) ~~_____~~ (b) ~~_____~~ obstruction of flow in a sewer system or injury of the system or damage to the wastewater collection, treatment, or disposal facilities;
- (e) ~~_____~~ (e) ~~_____~~ danger to life or safety of personnel;
- (f) ~~_____~~ (f) ~~_____~~ Any trucked or hauled pollutants, except at discharge points designated by the POTW;
- (g) ~~_____~~ (d) ~~_____~~ a nuisance or prevention of the effective maintenance or operation of the sewer system, through having a strong, unpleasant odor;
- (h) ~~_____~~ (e) ~~_____~~ air pollution by the release of toxic or malodorous gases or malodorous gas-producing substances;
- (f) ~~_____~~ interference with the wastewater treatment process that causes ;
- (i) ~~_____~~ (g) ~~_____~~ the City's/Agency's effluent or any other product of the treatment process, residues, sludges, or scums, to be unsuitable for recycling or reclamation and reuse; or interference to interfere with the recycling/reclamation process;
- (j) ~~_____~~ (h) ~~_____~~ a detrimental environmental impact or a nuisance in the waters of the state or a condition unacceptable to any public agency having regulatory jurisdiction over the City; Agency;
- (k) ~~_____~~ (i) ~~_____~~ discoloration or any other condition in the quality of the City's/Agency's treatment works effluent in such a manner that receiving water

quality requirements established by law cannot be met;

(l) ~~_____ (j) _____~~ conditions at or near the ~~City's Agency's~~ treatment works which violate any statute or any rule, regulation, or ordinance of any public agency or state or federal regulatory body;

(m) ~~_____ (k) _____~~ quantities or rates of flow which overload the ~~City's Agency's~~ collection or treatment facilities or cause excessive ~~City Agency~~ collection or treatment costs ~~to the City~~, or may use a disproportionate share of the ~~City Agency~~ facilities;

the

(n) ~~_____ (l) _____~~ The evolution of toxic gases, fumes, or vapors in quantities injurious to the health and safety of ~~City Agency~~ personnel; ~~or~~;

(o) ~~_____ (m) _____~~ pass-through of the City's treatment works, causing a violation of any requirement of the POTW's NPDES permit;

~~2.02 _____ 2.02~~ Prohibitions on Storm Drainage and Ground Water. -Storm water, ground water, rain water, street drainage, subsurface drainage or yard drainage ~~shall will~~ not be discharged through direct or indirect connections to a ~~City community~~ sewer unless ~~a permit is issued approved~~ by the ~~City Agency~~. The ~~City Agency~~ may approve the discharge of such water only when no reasonable alternative method of disposal is available.

~~_____~~ If a permit is granted for the discharge of such water into a ~~City community~~ sewer, the user ~~shall may be required to~~ pay the applicable user charges and fees and meet such other conditions ~~as~~ required by the ~~City Agency~~.

~~2.03 _____ 2.03~~ Prohibition-Limitations on Unpolluted Water. - Unpolluted water, including but not limited to cooling water, process water, or blow-down from cooling towers or evaporative coolers, ~~may shall will not~~ be discharged through direct or indirect connection to a ~~City community~~ sewer, ~~unless a permit is issued by the City Agency. The City Agency may approve the discharge of such water only when no reasonable alternative method of disposal is available.~~

~~_____~~ ~~If a permit is granted for the discharge of such water into a City community sewer, the user shall pay the applicable user charges and fees and shall meet such other conditions as required by the City Agency.~~ The City may, at its discretion, issue a permit for discharge directly to the City sewer upon written application by the user and payment of the applicable user charges and fees.

~~2.04 _____ 2.04~~ Limitations on Radioactive Wastes. -No person shall discharge or cause to be discharged ~~into a City sewer~~ any radioactive waste ~~into a community sewer~~ except;

~~_____ (a) _____~~ when;

(a) ~~the a~~ person is authorized to use radioactive materials by the ~~State Department of Health California Department of Public Health~~ or other governmental agency empowered to regulate the use of radioactive materials; and

~~(b)~~ ~~(b)~~ ~~when~~ the waste is discharged in strict conformity with the requirements of the United States Nuclear Regulatory Commission, the United States Department of Energy, and/or the California Radiation Control Regulations; and

~~(c)~~ ~~(c)~~ ~~when~~ the person is in compliance with all rules and regulations of all other applicable regulatory agencies.

~~2.05~~ ~~2.05~~ Limitations on the Use of Garbage Grinders.

-Waste from garbage grinders shall not be discharged into a Citycommunity sewer except:

÷

~~(a)~~ ~~wastes generated in preparation of food normally consumed on the premises; or~~

~~(b)~~ ~~where the user has obtained approval a permit for that specific use from the City Agency, and agrees to undertake whatever self-monitoring is required to enable the Agency to equitably determine the user charges based on the waste constituents and characteristics.~~

~~(a)~~ Where the user has obtained approval from the City.

~~(b)~~ ~~Such grinders shall~~must shred the waste to a degree that all particles will be carried freely under normal flow conditions prevailing in the Citycommunity sewer. - Garbage grinders shall not be used for grinding plastic, paper products, inert materials, or garden refuse.

~~2.06~~ ~~2.06~~ Limitations on Points of Discharge. -No person shall discharge any substances into the City directly into a manhole or other opening in a community sewer system other than through an approved building sewer. The City may, at its discretion, issue a permit for discharge directly into a manhole or other opening in a City sewer unless, upon written application by the user and payment of the applicable user charges and fees, ~~the Agency issues a permit for such direct discharges.~~

~~2.07~~ ~~2.07~~ Holding Tank Waste.

~~(a)~~ -A user proposing to discharge holding tank waste ~~in excess of 50 gallons per week~~ into a Citycommunity sewer ~~shall~~must secure a permit. -Unless otherwise allowed by the City Agency under the terms and conditions of the permit, a separate permit ~~shall~~must be secured for each separate discharge.

~~(b)~~ Unless specifically accepted under the terms and conditions of the This permit, no holding tank wastes from outside the City of Hayward's sewer service system shall be discharged.

~~(c)~~ The permit shall will state the specific location of discharge, the time of day the discharge is to occur, the volume of the discharge and the wastewater constituents and characteristics.

~~(d)~~ The waste proposed to be discharged must be tested, and the results must be transmitted to the City for review. The discharge must be approved by the City before discharge takes place.

(e) ~~If a permit is granted for discharge of holding tanks waste into a City sewer, the user shall pay the applicable user charges and fees and shall meet such other conditions as required by the City.~~

2.08 Limitations on Wastewater Strength. All pretreatment limitations and prohibitions developed under federal requirements or specified in the City's Wastewater Discharge Regulations shall be deemed pretreatment standards for the purposes of section 307(d) of the Federal Water Pollution Control Act. Users must comply with the categorical pretreatment standards found at 40 CFR Chapter I, Subchapter N, Parts 405-471. Discharge standards established herein shall be revised as necessary to comply with federal requirements documented in the Code of Federal Regulations, Title 40, Part 403.

~~2.08 Limitations on Wastewater Strength.~~

~~2.08.1 No person shall discharge wastewater containing in excess of the following daily maximum limits:
(Amended by Ord. 93-22, adopted October 5, 1993)~~

- 1.0 mg/L arsenic
- 0.2 mg/L cadmium
- 2.0 mg/L copper
- ~~0.6 mg/L cyanide~~
- 1.0 mg/L lead
- 0.01 mg/L mercury
- 1.0 mg/L nickel
- 0.5 mg/L silver
- 2.0 mg/L total chromium
- 3.0 mg/L zinc

~~2.08.2 No person shall discharge any wastewater in violation of the following instantaneous limits:
(Amended by Ord. 97-06, adopted May 13, 1997
and Ord. 93-22, adopted October 5, 1993)~~

→

~~(a) containing in excess of 0.6 mg/L cyanide;~~

~~(b) having a temperature higher than 150° F (65.5° C), or any thermal discharge which as a result of temperature and/or volume causes the influent of the wastewater treatment plant to exceed 104° F (40° C);~~

~~(c) containing more than 300 mg/L of oil or grease of animal or vegetable origin, unless a higher limit is established by permit when all of the following conditions are met:
(1) The oil and grease is discharged in an emulsified or other~~

form which, in the opinion of the [CityAgency](#), poses no threat to clogging of the wastewater collection system;

(2) The oil and grease, in the opinion of the [CityAgency](#), poses no threat to the operation of the wastewater treatment plant; and

(3) The oil and grease, in the opinion of the [CityAgency](#), is amenable to removal and treatment by the processes utilized by the wastewater treatment plant;

(~~e~~d) containing more than 100 mg/L of oil or grease of mineral or petroleum origin;

(~~e~~e) having a pH lower than 6.0, or otherwise causing corrosive structural damage to the POTW, equipment, or the City's collection system; or equipment;

(~~e~~f) containing in excess of 2.0 mg/L Total Toxic Organics (TTO), measured as the sum of:

1. Acenaphthene
2. Acrolein
3. Acrylonitrile
4. Benzene
5. Benzidine
6. Carbon tetrachloride (tetrachloromethane)
7. Chlorobenzene
8. 1,2,4-trichlorobenzene
9. Hexachlorobenzene
10. 1,2-dichloroethane
11. 1,1,1-trichloroethane
12. Hexachloroethane
13. 1,1-dichloroethane
14. 1,1,2-trichloroethane
15. 1,1,2,2-tetrachloroethane
16. Chloroethane
17. Bis (2-chloroethyl) ether
18. 2-chloroethyl vinyl ether (mixed)
19. 2-chloronaphthalene
20. 2,4,6-trichlorophenol
21. Parachlorometa cresol
22. Chloroform (trichloromethane)
23. 2-chlorophenol
24. 1,2-dichlorobenzene
25. 1,3-dichlorobenzene
26. 1,4-dichlorobenzene
27. 3,3 dichlorobenzidine
28. 1,1-dichloroethylene

29. 1,2-trans-dichloroethylene
30. 2,4-dichlorophenol
31. 1,2-dichloropropane
32. 1,3-dichloropropylene (1,3-dichloropropene)
33. 2,4-dimethylphenol
34. 2,4-dinitrotoluene
35. 2,6-dinitrotoluene
36. 1,2-diphenylhydrazine
37. Ethylbenzene
38. Fluoranthene
39. 4-chlorophenyl phenyl ether
40. 4-bromophenyl phenyl ether
41. Bis (2-chloroisopropyl) ether
42. Bis (2-chloroethoxy) methane
43. Methylene chloride (dichloromethane)
44. Methyl chloride (chloromethane)
45. Methyl bromide (bromomethane)
46. Bromoform (tribromomethane)
47. Dichlorobromomethane
48. Chlorodibromomethane
49. Hexachlorobutadiene
50. Hexachlorocyclopentadiene
51. Isophorone
52. Naphthalene
53. Nitrobenzene
54. 2-nitrophenol
55. 4-nitrophenol
56. 2,4-dinitrophenol
57. 4,6-dinitro-o-cresol
58. N-nitrosodimethylamine
59. N-nitrosodiphenylamine
60. N-nitrosodi-n-propylamine
61. Pentachlorophenol
62. Bis (2-ethylhexyl) phthalate
63. Butyl benzyl phthalate
64. Di-n-butyl phthalate
65. Di-n-octyl phthalate
66. Diethyl phthalate
67. Dimethyl phthalate
68. 1,2-benzanthracene (benzo(a)anthracene)
69. Benzo(a)pyrene (3,4-benzopyrene)
70. 3,4-Benzofluoranthene (benzo(b)fluoranthene)
71. 11,12-benzofluoranthene (benzo(k)fluoranthene)
72. Chrysene
73. Acenaphthylene
74. Anthracene
75. 1,12-benzoperylene (benzo(ghi)perylene)
76. Fluorene
77. Phenanthrene

78. 1,2,5,6-dibenzanthracene (dibenzo(a,h)anthracene)
79. Indeno (1,2,3-cd) pyrene (2,3-o-phenylene pyrene)
80. Pyrene
81. Tetrachloroethylene
82. Toluene
83. Trichloroethylene
84. Vinyl chloride (chloroethylene)

(fg) containing in excess of 5.0 mg/L Phenol

(gh) containing any trace of pesticides, poly-chlorinated biphenyls (PCBs) and dioxins (e.g., TCDDs) as determined by EPA-approved analytical methodologies for these compounds:

1. Aldrin
2. Dieldrin
3. Chlordane (technical mixture and metabolites)
4. 4,4-DDT
5. 4,4-DDE(p,p-DDX)
6. 4,4-DDD(p,p-TDE)
7. Alpha-endosulfan
8. Beta-endosulfan
9. Endosulfan sulfate
10. Endrin
11. Endrin aldehyde
12. Heptachlor
13. Heptachlor epoxide
14. (BHC-hexachlorocyclohexane)
15. Alpha-BHC
16. Beta-BHC
17. Gamma-BHC
18. Delta-BHC
19. (PCB-polychlorinated biphenyls)
20. PCB-1242 (Arochlor 1242)
21. PCB-1254 (Arochlor 1254)
22. PCB-1221 (Arochlor 1221)
23. PCB-1232 (Arochlor 1232)
24. PCB 1248 (Arochlor 1248)
25. PCB-1260 (Arochlor 1260)
26. PCB-1016 (Arochlor 1016)
27. Toxaphene
28. 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)

~~For~~ groundwater remediation permits only, the following special limits apply:

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~~(hi)~~ containing in excess of 5.0 mg/L total petroleum hydrocarbons-- gasoline or diesel

~~(j);~~

~~(i)~~ containing in excess of 0.5 mg/L the sum of benzene, ethyl benzene, toluene, xylene.

~~2.08.3~~ Effluent limitations promulgated by the ~~F~~federal Act shall apply in any instance where they are more stringent than those in these regulations. Under section 307 (b) and (c) of the Act, ~~f~~Federal ~~federal~~ pretreatment standards are designed to achieve two purposes: (1) to protect the operation of ~~POTW~~publicly owned treatment works, and (2) to prevent the discharge of pollutants which pass through ~~POTW~~such works inadequately treated. Users in industrial categories subject to effluent guidelines issued under section 304(b) of the Act which are discharging incompatible pollutants to ~~POTW~~publicly owned treatment works are required to adopt best control technology currently available, as defined by the ~~EPA~~U.S. Environmental Protection Agency administrator pursuant to section 304(b) of the Act.

~~2.08.4~~ The Manager or designated staff may develop Best Management Practices (BMPs), by ordinance or in individual wastewater discharge permits, to implement local limits and the requirements of Section 2.01. Such BMPs shall be considered local limits and pretreatment standards for the purposes of this Section and section 307(d) of the Act.

~~2.09 Prohibition on Slug Discharges.~~ ~~2.09 Prohibition on Slug Discharges.~~ No user shall discharge any pollutant, including oxygen-demanding pollutants, at a flow rate and/or pollutant concentration which causes or threatens to cause interference with the wastewater treatment process. ~~For the purposes of this section, any discharge which, in concentration or quantity of flow, exceeds for any period more than ten times the average 24 hour concentration or flow rate during normal operation shall be deemed a slug discharge which threatens to cause interference with the wastewater treatment process.~~ The City may require any user to develop a spill/slug control plan as described in section Section 4.02(dc)(10) of these regulations when, in the opinion of the City, a user has a demonstrated or reasonable potential to discharge in such a manner.

~~2.10 Use of Dilution Prohibited.~~ ~~2.10 Use of Dilution Prohibited.~~ ~~Except where expressly authorized to do so by an applicable pretreatment standard or requirement, n~~No user shall increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate pretreatment to achieve compliance with a pretreatment standard, requirement or discharge limitation. ~~The City Agency may impose mass limitations on industrial users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases where the imposition of mass limitations is appropriate.~~

~~2.11~~ ~~2.11~~ 2.11 Prohibition of Bypass.

~~(a)~~ ~~(a)~~ Bypass is prohibited and the CityAgency may take enforcement action against any user for bypass per 40 CFR Sec 403.17-unless:

~~(1)~~ ~~(i)~~ bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

~~(2)~~ ~~(ii)~~ there were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

~~(3)~~ ~~(iii)~~ the industrial user submitted notices as described in 40 CFR 403.17(c). If an Industrial User knows in advance of the need for a bypass, it shall submit prior notice to the City, if possible at least ten days before the date of the bypass. An Industrial User shall submit oral notice of an unanticipated bypass that exceeds applicable pPretreatment sStandards to the City within 24 hours from the time the Industrial User becomes aware of the bypass.

~~in 40 CFR 403.17(c).~~

~~(b)~~ ~~The CityAgency may approve an anticipated bypass, after considering its adverse affects, if the CityAgency determines that it will meet the three conditions specified in part (a) of this section.~~

~~2.12~~ ~~2.12~~ 2.12 Prohibition on Discharge of Process Solution Tanks. -No user shall, without prior and explicit approval of the CityAgency, discharge the contents, in whole or part, of any process solution tank to the sewer system. For the purposes of this section, such materials include, but are not limited to, concentrated solutions utilized within any commercial or industrial operation, containerized liquids of any description whatsoever, spoiled or otherwise unusable raw materials of any description whatsoever, spoiled or otherwise unusable products of any description whatsoever.

~~2.13~~ ~~2.13~~ 2.13 Prohibition on Discharge of Petroleum or Mineral Oil Causing Pass-through or Interference. -Notwithstanding the provisions of ~~section~~ Section 2.08.2(de), no user may discharge petroleum oil, non-biodegradable cutting oil or other products of mineral origin in any amount that causes interference or pass-through.

~~2.14~~ ~~2.14~~ 2.14 Prohibition of the Discharge of Trucked or Hauled Wastes.- The discharge of any trucked or otherwise hauled wastes to the sanitary sewer system is prohibited except as the CityAgency may permit under the provisions of ~~section~~ Section 2.07.

2.15 Requirements for Dental facilities that Remove or Place Amalgam Fillings.

This section shall be known and may be cited as the Dental Amalgam Recovery Program Ordinance of the City of Hayward.

2.15.1 Definitions. For the purposes of this section, the following definitions shall apply:

- (a) Amalgam separator. A device that employs filtration, settlement, centrifugation, or ion exchange to remove amalgam and its metal constituents from a dental office vacuum system before it discharges to the sewer.
- (b) Amalgam waste. Includes non-contact amalgam (amalgam scrap that has not been in contact with the patient); contact amalgam (including, but not limited to, extracted teeth containing amalgam); amalgam sludge captured by chairside traps, vacuum pump filters, screens, and other amalgam trapping devices; used amalgam capsules; and leaking or unusable amalgam capsules.
- (c) ISO 11143. The International Organization for Standardization's standard for amalgam separators.

2.15.2 Best Management Practices. All owners and operators of dental facilities that remove or place amalgam fillings shall comply with the following waste management practices:

- (a) Segregate amalgam containing waste. Amalgam waste must never be placed in the regular trash, placed with infectious (red bag) waste, or flushed down the drain or toilet.
- (b) Eliminate all use of bulk elemental mercury (also referred to as liquid or raw mercury). Any bulk elemental mercury must be recycled or disposed of as hazardous waste.
- (c) Use only pre-capsulated dental amalgam in the smallest appropriate size; keep a variety of amalgam capsules on hand to more closely match the amount needed in a restoration.
- (d) Change or empty chair-side traps frequently and store the trap and its contents with amalgam waste. Never rinse traps in the sink. If you have reusable traps, make sure any material you use to clean the trap is disposed of with amalgam waste.
- (e) Do not use sodium hypochlorite (bleach) and other chlorine-containing products to cleanse vacuum lines, as these products have been shown to release the mercury in the amalgam. Information on non-bleach line cleaners can be found at www.baywise.org.

- (f) Change vacuum pump filters and screens as needed or as directed by the manufacturer. Seal and store filters and screen, as well as their contents (including any water that may be present), with amalgam waste in an airtight container.
- (g) For dry vacuum turbine ~~vacuum~~-units, have a qualified maintenance technician, licensed amalgam recycler or hazardous waste disposal service pump out and clean the air-water separator tank at least once per six months. Perform this service more frequently if necessary to maintain suction or if so directed by the vacuum system manufacturer.
- (h) Have a licensed recycling contractor, mail-in service, or hazardous waste hauler remove your amalgam wastes. Recycling is the preferred method for disposal of amalgam wastes.
- (i) Maintain written or computerized logs of amalgam waste generated, and of amalgam waste removed from the vacuum system or plumbing. In addition, obtain receipts or other certified documentation from your recycler or hazardous waste hauler of all amalgam waste recycling and disposal shipments. Keep these receipts on file for at least five years, and make them available to authorized City inspectors upon request.
- (j) Store amalgam waste in airtight containers. Follow recycler's or hauler's instructions for disinfection of waste and separation of contact and non-contact amalgam. Do not use disinfectant solutions with oxidizers, such as bleach, to disinfect the amalgam.
- (k) Use a licensed hauler to transport spent x-ray fixer solution to be recycled or managed as hazardous waste. Never pour fixer solution down the drain.
- (l) Train staff in the proper handling, management, and disposal of mercury-containing material and fixer solutions. Maintain a training log and keep this log for at least five years. This log must be made available to authorized City inspectors upon request.

2.15.3 Amalgam Separator Requirements. All owners and operators of dental vacuum suction systems, except as set forth in subsection 2.15.4 of this section, shall comply with the following:

- (a) An ISO 11143 certified amalgam separator device shall be installed for each dental vacuum suction system on or before January 1, 2011; provided, however, that all dental facilities that are newly constructed on and after the effective date of this ordinance shall include an installed ISO 11143 certified amalgam separator device capable of removing a minimum of 95 percent of amalgam. The amalgam separator system shall be certified at flow rates comparable to the flow rate of the actual vacuum suction system operation. Neither the separator device nor the related

plumbing shall include an automatic flow bypass. For facilities that require an amalgam separator that exceeds the practical capacity of ISO 11143 test methodology, a non-certified separator will be accepted, provided that smaller units from the same manufacturer and of the same technology are ISO-certified. For facilities that have installed amalgam separators on or before the effective date of this Ordinance that are not ISO-certified, they may be grandfathered in if it can be shown that the existing device provides amalgam removal similar to an ISO-certified system. Alternative materials and methods may be proposed to the ~~Water Pollution Control (WPC) Administrator~~ ~~Manager~~ for approval.

- (b) Self- certification of Amalgam Separator Installation form issued by the City of Hayward shall be submitted to the ~~WPC Administrator~~ ~~Manager~~ within 30 days of installation.
- (c) Amalgam separators shall be maintained in accordance with manufacturer recommendations. Installation, certification, and maintenance records shall be available for immediate inspection upon request by the ~~WPC Administrator~~ ~~Manager~~ or a designee during normal business hours.

2.15.4 Exemptions. The following types of dental practice are exempt from this ~~section~~ ~~Section 2.15~~, provided that removal or placement of amalgam fillings occurs at the facility no more than 3 days per year:

- (a) Orthodontics
- (b) Periodontics
- (c) Oral and maxillofacial surgery
- (d) Radiology
- (e) Oral pathology or oral medicine
- (f) Endodontics and prosthodontics

~~———— National Categorical Pretreatment Standards. Users must comply with the categorical Pretreatment Standards found at 40 CFR Chapter I, Subchapter N, Parts 405–471.~~

~~3.01~~ ~~3.01~~ ~~Metered Water Supply.~~ -User charges and fees shall be determined based on applied against the total amount of water used from all sources unless, in the opinion of the City Agency, significant portions of water received are not discharged to a City community sewer. - The total amount of water used from public and private sources will be determined by means of public meters or by private meters, installed and maintained at the expense of the user and approved by the City. Agency.

~~3.02~~ ~~3.02~~ ~~Metered Wastewater Volume and Metered Diversions.~~ -For users where, in the opinion of the City Agency, a significant portion of the water received from any metered source does not flow into a City community sewer because of the principal activity of the user or removal by other means, the user charges and fees will be determined based on applied against the volume of water discharged from such premises into a City community sewer. Written notification and proof of the diversion of water ~~shall~~must be provided by the user if the user is to avoid the ~~determination~~application of ~~the~~ user charges and fees based on against the total amount of water used from all sources. -The user may install a meter of a type and at a location approved by the City Agency and at the user's~~user's~~ expense. -Such meters may measure either the amount of sewage discharged or the amount of water diverted.- Such meters shall be tested for accuracy at the expense of the user when deemed necessary by the Manager.

~~3.03~~ ~~3.03~~ ~~Estimated Wastewater Volume.~~

(a) ~~3.03.1~~ ~~Users without~~Without ~~Source Meters.~~ -For users where, in the opinion of the City Agency, it is unnecessary or impractical to install meters, the quantity of wastewater discharged may be based upon an estimate prepared by the City Agency.- This estimate shall be based upon a rational determination of the wastewater discharged and may consider such factors as the number of fixtures, seating capacity, population equivalent, annual production of goods and services, or such other determinants of water use necessary to estimate the wastewater volume discharged.

(b) ~~3.03.2~~ ~~Users with~~With ~~Source Meters.~~ -For users who, in the opinion of the City Agency, divert a significant portion of their flow from a City community sewer, the user charges may be based upon an estimate of the volume to be discharged, provided the user obtains a Wastewater Discharge

~~Permit~~ or other approval by the City and pays the applicable user charges and fees. -The estimate ~~shall~~must include the method and calculations used to determine the wastewater volume and may consider such factors as the number of fixtures, seating capacity, population equivalents, annual production of goods and services, or such other determinants~~determinations~~ of water use necessary to estimate the wastewater volume discharged.

Chapter 4

ADMINISTRATION

4.01 Submission of Required ~~4.01 Discharge Reports.~~ ~~The City Agency, or the Authority through the Agency,~~ may require that any person discharging or proposing to discharge wastewater ~~to into~~ a ~~City~~ community sewer file reports relating to that a periodic discharge or proposed report. ~~The discharge pursuant to 40 CFR 403.12. All required reports shall include the certification statements and signatory requirements described in section Section 4.09 of these regulations. Required reports may include:~~

- (a) Wastewater Discharge Report. ~~Wastewater Discharge Reports report~~ may include, but not be limited to: ~~;~~ nature of process, volume, ~~rates of flow rates,~~ mass emission rate, production quantities, hours of operation, number ~~and classification~~ of employees, ~~and/or~~ other information which relates to the generation of waste, including wastewater constituents and characteristics in the wastewater discharge. Such reports may also include the chemical constituents and quantity of liquid or gaseous materials stored on site even though they may not normally be discharged. ~~The City In addition to discharge reports, the Agency~~ may require wastewater discharge information in the form of ~~Wastewater Discharge Permit applications and self-monitoring reports or periodic reports on continuing compliance. All monitoring results obtained pursuant to section Section 1.03 of these regulations must be submitted to the City, regardless of whether the City required such monitoring.~~

The reports required in paragraph (a) of this section shall contain the results of sampling and analysis of the Discharge, including the flow and the nature and concentration, or production and mass where requested by the City, of pollutants contained therein which are limited by the applicable pPretreatment sStandards. This sampling and analysis may be performed by the City in lieu of the Industrial User. Where the POTW performs the required sampling and analysis in lieu of the Industrial User, the uUser will not be required to submit the compliance certification required under section Section 4.09(a). In addition, where the POTW itself collects all the information required for the report, including flow data, the Industrial User will not be required to submit the report.

The monitoring reports required in paragraph (a) of this section must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which are representative of conditions occurring during the reporting period. The City shall require the right frequency of monitoring necessary to assess and assure compliance by Industrial Users with applicable pPretreatment sStandards and rRequirements. Grab samples must be used for pH, cyanide, ~~total phenols~~phenol, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be

obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the City. Where time-proportional composite sampling or grab sampling is authorized by the City, the samples must be representative of the Discharge and the decision to allow the alternative sampling must be documented in the Industrial User file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 CFR part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: For cyanide, ~~total phenols~~phenol, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil & grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the City, as appropriate.

(b) Monitoring Waiver. The City may authorize an Industrial User subject to a categorical ~~p~~retreatment ~~s~~Standard to forego sampling of a pollutant regulated by a categorical ~~p~~retreatment ~~s~~Standard if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User. [see 40 CFR 403.12(e)(2)]. This authorization is subject to the following conditions:

(1) The waiver may be authorized where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical Standard and otherwise includes no process wastewater.

(2) The monitoring waiver is valid only for the duration of the effective period of the individual wastewater discharge permit, but in no case longer than 5 years. The ~~u~~User must submit a new request for the waiver before the waiver can be granted for each subsequent individual wastewater discharge permit. See Section 4.02(~~d~~c)(11).

(3) In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.

(4) The request for a monitoring waiver must be signed in accordance with Section 1.02(~~b~~a), and include the certification statement in 4.09(c) (40

- (5) Non-detectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.
- (6) Any grant of the monitoring waiver by the Manager must be included as a condition in the uUser's permit. The reasons supporting the waiver and any information submitted by the uUser in its request for the waiver must be maintained by the Manager for 3 years after expiration of the waiver.
- (7) Upon approval of the monitoring waiver and revision of the uUser's permit by the Manager, the Industrial User must certify on each report with the statement in Section 4.09(c) below, that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User.
- (8) In the event that a waived pollutant is found to be present or is expected to be present because of changes that occur in the uUser's operations, the uUser must immediately: Comply with the monitoring requirements of Section 4.01(a), or other more frequent monitoring requirements imposed by the Manager, and notify the Manager.
- (9) This provision does not supersede certification processes and requirements established in categorical pPretreatment sStandards, except as otherwise specified in the categorical pPretreatment sStandard.
- (c) Baseline Monitoring Report. Categorical industrial users are required to submit a baseline monitoring report (BMR) under the circumstances set forth below. This report shall identify the facility, indicate permits held, describe operations, and contain flow and pollutant measurements. The requirements for a BMR, found in 40CFR Chapter I, Subchapter N, Part 403.12(b) are hereby incorporated into these regulations. These requirements specify conditions, including timelines, for completion of a BMR. The report shall be reviewed by an authorized representative of the user, and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance and/or additional pretreatment is required.

Baseline monitoring reports are required under the following circumstances:

- (1) At least 90 days prior to commencement of discharge for new users; or
- (2) For existing users, within 180 days after the effective date of an applicable categorical standard.

For sampling required in support of baseline monitoring and 90-day compliance reports required in paragraph (c**b**) of this section, a minimum of four (4) grab samples must be used for pH, cyanide, ~~total phenols~~phenol, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the City may authorize a lower minimum.

- (d) Compliance Schedule for the Installation of Technology. The City may require a user to develop a compliance schedule for the installation of technology to meet applicable pretreatment standards or requirements. A compliance schedule for the installation of technology may be required even without violations, if the City determines one is necessary. Progress reports for the compliance schedule shall be considered a requirement.

The following conditions shall apply to the compliance schedule required by this Section of the ordinance:

- ~~(1) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the uUser to meet the applicable pPretreatment sStandards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation). No ;~~
- ~~No increment referred to above shall exceed nine (9) months.;~~
- ~~(2) The uUser shall submit a progress report to the Manager no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the uUser to return to the established schedule. ;and~~
- ~~In no event shall more than nine (9) months elapse between such progress~~

reports to the Manager.

- (e) Report on Compliance with Categorical Deadline. Each categorical user shall submit a report within 90 days after the final date for compliance, or upon commencement of discharge, whichever comes later. The report shall contain flow and pollutant measurements, and a certification of whether pretreatment standards are being met consistently. If pretreatment standards are not being met consistently, a description of needed additional operations and maintenance or pretreatment shall be included. This certification shall be made by a qualified professional, and the report shall be reviewed by an authorized representative of the user.
- (f) Notice of Violation/Resampling Report. If results from sampling by a user indicate a violation, the user shall notify the City within 24 hours of ~~becoming aware of~~ confirming the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the City within 30 days after becoming aware of the violation.

~~If sampling performed by an Industrial User indicates a violation, the User shall notify the City within 24 hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the City within 30 days after becoming aware of the violation. Where the City has performed the sampling and analysis in lieu of the Industrial User, the City must perform the repeat sampling and analysis unless it notifies the uUser of the violation and requires the uUser to perform the repeat analysis. Resampling is not required if:~~

- (1) The City performs sampling at the Industrial User at a frequency of at least once per month; or
- (2) The City performs sampling at the uUser between the time when the initial sampling was conducted and the time when the uUser or the Control Authority receives the results of this sampling.

- (g) Slug Control Plan. The City will evaluate whether each Significant Industrial User needs a plan or other action to control Slug Discharges. For Industrial Users identified as significant prior to November 14, 2005, this evaluation must have been conducted at least once by October 14, 2006; additional Significant Industrial Users must be evaluated within 1 year of being designated a Significant Industrial User. Significant Industrial Users are required to notify the POTW immediately of any changes at its facility affecting potential for a Slug Discharge. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

- (1) Description of discharge practices, including non-routine batch discharges;
- (2) Description of stored chemicals;
- (3) Procedures for immediately notifying the POTW of Slug Discharges,

including any Discharge that would violate a prohibition under 2.01 with procedures for follow-up written notification within five days;

(4) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response;

4.02 Wastewater Discharge Permits.

~~4.02 Wastewater Discharge Permits.~~

(a) ~~4.02.1~~ Mandatory Permits. —All ~~Significant Industrial~~ ~~critical~~ ~~Users~~ proposing to connect or to discharge into a ~~City~~ ~~community~~ sewer ~~shall~~ ~~must~~ obtain a Wastewater Discharge Permit before connecting to or discharging into a ~~City~~ ~~community~~ sewer. —All existing ~~Significant Industrial Users and unclassified~~ ~~critical~~ users connected to or discharging into a ~~City~~ ~~community~~ sewer ~~who do not currently have~~ ~~must obtain~~ a Wastewater Discharge Permit ~~shall obtain such permit~~ within 90 days ~~of being notified by~~ ~~after~~ the City that a permit is required and shall comply with ~~effective date of these regulations.~~ ~~For purposes of these regulations and any modifications made hereto within 90 days of their effective date.~~ ~~, a critical user is defined as:~~

~~Non-Sewered Credit~~

~~—All users for which federal categorical standards have been promulgated;~~

~~—Any user that discharges 25,000 gallons per day of process wastewater or 50,000 gallons per day total wastewater;~~

~~—Any user that contributes a process waste stream which comprises five percent or more of the average dry weather hydraulic or organic (BOD, TSS, etc.) capacity of the wastewater treatment plant;~~

~~—Any user that has a reasonable potential, in the opinion of the manager or the pretreatment program approval authority to significantly or~~

adversely affect the treatment plant.

Any user classified as a critical user under the above definition, except critical users for which federal categorical pretreatment standards have been promulgated, may be de-classified as a critical user if, in the opinion of the Agency, the user has no reasonable potential for adversely affecting the collection and/or treatment system or for violating any pretreatment regulations.

4.02.2 Optional Permits. The Manager, at his or her discretion, may issue a Non-Sewered Credit Wastewater Discharge Permit to any user, upon application, in accordance with the terms of this section in the following categories:

(a) a user who provides documentation, satisfactory to the City, demonstrating that a portion of the water consumed by the user is not discharged requires the user charges and fees to the City's sewer. Such non-sewered water may include, but be based on an estimation of wastewater flow, or

(b) any user whose wastewater strength is less than the normal range for the user classification to which the user is not limited to: assigned because of pretreatment, process changes or other reasons.

water that is incorporated into the user's product(s);

water that is evaporated;

(b) 4.02.3 Permit Application. Users seeking a Wastewater Discharge Permit shall complete and file with the Manager an application in the form prescribed by the Manager and accompanied by the applicable fees. The applicant may be required to submit, in units and terms appropriate for evaluation, the following information:

(1) (a) name, address, and SIC number of applicant;

(2) (b) volume of wastewater to be discharged;

(3) (c) wastewater constituents and characteristics including, but not limited to, those mentioned in Section 2.08 as determined by an Environmental Laboratory Accreditation Program (ELAP) e-certified laboratory approved by the City; Agency;

(4) (d) time and duration of discharge;

(5) (e) average and 30-minute peak wastewater flow rates, including daily, monthly, and seasonal variations, if any;

- (6) _____ (f) _____ site plans, floor plans, mechanical and plumbing plans, and details to show all sewers and appurtenances by size, location, and elevation;
- (7) _____ (g) _____ description of activities, facilities, and plant processes on the premises including all materials, processes, and types of materials which are or could be discharged;
- (8) _____ (h) _____ each product produced by type, amount, and rate of production;
- (9) _____ (i) _____ number and type of employees, and hours of work;
- (10) slug control plan which outlines discharge practices (including non-routine batch discharges), describes stored hazardous chemicals and those with the potential to cause pollution, and contains procedures both to notify the City immediately of slug discharges and to prevent adverse impacts from any accidental spill;
- (11) any requests for a monitoring waiver (or a renewal of an approved monitoring waiver) for a pollutant neither present nor expected to be present in the discharge based on Section 4.01(b) [40 CFR 403.12(e)(2)].
- (12) _____ (j) _____ any other information as may be deemed by the Manager to be necessary to evaluate the permit application.

_____ The Manager will evaluate the data and information furnished by the user and may require additional information. ~~After evaluation and acceptance of the data and information furnished, the Manager may issue a Wastewater Discharge Permit subject to terms and conditions provided herein.~~

(c) _____ ~~4.02.4 Permit Conditions.~~ Wastewater Discharge Permits shall be expressly subject to all provisions of these regulations and all other regulations, user charges, and fees established by the City Agency. The conditions of Wastewater Discharge Permits shall be uniformly enforced by the Manager in accordance with these regulations, and applicable state and federal regulations. Permits may contain the following:

- (1) _____ (a) _____ the unit charge or schedule of user charges and fees for the wastewater to be discharged to a City community sewer;
- (2) _____ (b) _____ the average and maximum wastewater constituents and characteristics, including Best Management Practices BMPs, based on applicable pPretreatment sStandards; ; ;
- (3) _____ (e) _____ limits on rate and time of discharge or

requirements for flow regulations and equalization;

(4) _____ (d) requirements for installation of inspection and sampling facilities;

(5) _____ (e) pretreatment requirements;

(6) _____ (f) specifications for monitoring programs which may include sampling locations, frequency and method of sampling, number, types and standards for tests, and reporting schedule required by the POTW and in accordance with self-monitoring requirements in 403.8(f)(1)(iii)(B)(4);

(7) _____ (g) requirements for submission of technical reports or discharge reports, including, but not limited to the baseline monitoring reports described in section-Section 4.01 of these regulations; compliance schedule progress reports, report on compliance with categorical pretreatment standard deadline, periodic report on continuous compliance, or any report required by 40 CFR 403.12;

(8) _____ (h) requirements for maintaining plant records relating to wastewater discharge as specified by the CityAgency, and affording CityAgency access thereto;

(9) _____ (i) mean and maximum mass emission rates, or other appropriate limits when incompatible pollutants (as defined by section-Section 1.02(kx)))1)) are proposed or presentpresented in the user'suser's wastewater discharge;

(10) requirements to control Slug Discharge, if determined by the Manager to be necessary.

(11) the process for seeking a waiver from monitoring for a pollutant neither present nor expected to be present in the Discharge in accordance with Section 4.01(b) and any granted monitoring waiver.

(12) _____ (j) other conditions as deemed appropriate by the CityAgency to ensureinsure compliance with these regulations.

(d) _____ 4.02.5-Duration of Permits.- Permits shall be issued for a specified time period, not to exceed five years. A permit may be issued for a period less than one year or may be stated to expire on a specific date. ~~If the user is not notified by the Agency 30 days prior to the expiration of the permit, the permit shall be extended one additional year.~~ The terms and conditions of the permit may be subject to modification and change by the CityAgency during the life of the permit as limitations or requirements as identified in section-Section 2.08 are modified, ~~and changed.~~ The user shall be informed of any proposed

changes in his or her permit at least 30 days prior to the effective date of change. ~~Except as changes apply to categorical industrial users (CIUs) subject to pretreatment standards for existing sources (PSES), Any~~ Any changes or new conditions in the permit shall include a reasonable time schedule for compliance ~~if, in the City's opinion, the 30 days notice is not sufficient, except as changes apply to categorical industrial users (CIUs) subject to pretreatment standards for existing sources (PSESSES).~~ CIUs subject to Pretreatment Standard for New Sources (PSESSNS) must achieve compliance upon discharge.

(e) ~~Prohibition on~~ ~~4.02.6~~ Transfer of a Permit. -Wastewater Discharge Permits are issued to a specific user for a specific operation. ~~A~~ Wastewater Discharge Permit shall not be reassigned, ~~or~~ transferred, or sold to a new owner, new user, different premises, or a new or changed operation.

(f) ~~4.02.7~~ Revocation of Permit. -Any user who does any of ~~violates~~ the following ~~or violat~~es conditions of the permit or any conditions of these regulations, or applicable state and federal regulations is subject to permit revocation:

(1) ~~(a)~~ (a) failure of the user to factually report the wastewater constituents and characteristics of his or her discharge;

(2) ~~(b)~~ (b) failure of the user to report and obtain prior written approval for significant changes in operations, ~~or~~ wastewater constituents or; characteristics, ~~and~~ and or flow rates;

(3) ~~(c)~~ (c) refusal of reasonable access to the user's ~~user's~~ premises for the purpose of inspection or monitoring; or

(4) ~~(d)~~ (d) violations of conditions of the permit.

~~4.03~~ ~~4.03~~ Monitoring Facilities. -The City Agency may require the user to construct at his or her own expense, monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer or internal drainage systems and may also require sampling or metering equipment to be provided, installed, and operated at the user's ~~user's~~ expense. -The monitoring facility should normally be situated on the user's ~~user's~~ premises; but the City Agency may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street or sidewalk area with the approval of the public agency having jurisdiction over that street or sidewalk, and located so that it will not be obstructed by landscaping or parked vehicles.

~~_____~~ If the monitoring facility is inside the user's ~~user's~~ fence, there shall be accommodations to allow access for City Agency personnel, such as a gate secured with a City Agency lock. - There shall be ample room in or near such sampling manhole to allow accurate

sampling and compositing of samples for analysis. –The manhole, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.

Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the [City's Agency's](#) requirements and all applicable local agency construction standards and specifications. –Construction shall be completed within 90 days following written notification by the [City Agency](#) unless a time extension is otherwise granted by the [City Agency](#).

4.04 ~~4.04~~ Inspection and Sampling. –The [City Agency](#) may inspect the facilities of any user to ~~ascertain whether all requirements the purpose of these regulations is being met and all requirements are being complied with.~~ compliance with these regulations. Persons or occupants of premises where wastewater is created or discharged shall allow the [City Agency](#) or its representative ready access at all reasonable times to all parts of the premises for the purposes of inspection or sampling or in the performance of any of their duties. –The [City Agency](#) shall have the right to set up on the ~~user's~~ user's property such devices as are necessary to conduct sampling or metering operations. – Where a user has security measures in force which would require proper identification and clearance before entry into their premises, the user shall make necessary arrangements with their security personnel so that, upon presentation of suitable identification, personnel from the [City Agency](#) will be permitted to enter without delay for the purposes of performing their specific responsibilities.

4.05 ~~4.05~~ Pretreatment. – Users shall make wastewater acceptable under the limitations established herein before discharging to any [City community](#) sewer. –Any facilities required to pretreat wastewater to a level acceptable to the [City Agency](#) shall be provided and maintained at the ~~user's~~ user's expense. – Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the [City Agency](#) for review, and shall be acceptable to the [City Agency](#) before construction of the facility. – The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent wastewater acceptable to the [City Agency](#) under the provisions of these regulations. – Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable to the [City](#). In accordance with Public Works Policy Memo 5.11, the City may require installation of a grease control device when in the opinion of the City, such a device is necessary to prevent excessive discharge of oil and grease into the City sewer by the user. ~~Agency.~~

4.06 ~~4.06~~ Protection from Accidental Discharge. –Each user shall provide protection from accidental discharge of prohibited materials or other wastes regulated by these regulations. Such facilities shall be provided and maintained at the ~~user's~~ user's expense. – Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the [City Agency](#) for review, and shall be acceptable to the [City Agency](#) before construction of the facility.

–The review of such plans and operating procedures will in no way relieve the user

from the responsibility of modifying the facility as necessary to provide the protection necessary to meet the requirements of this section.

~~4.07~~ ~~_____~~ ~~4.07~~ Confidential Information.— All information and data on a user obtained from reports, questionnaires, permit application, permits, and monitoring programs, and from inspections, shall be available to the public or other governmental agency without restriction unless the user specifically requests it not be and is able to demonstrate to the satisfaction of the CityAgency that the release of ~~such~~ information would divulge information, processes, or methods which would be detrimental to the ~~user's~~ user's competitive position.

~~_____~~When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available to the U.S. Environmental Protection Agency, the State Water Resources Control Board and the Regional Water Quality Control Boards, which are bound by the same confidentiality rules as the City government agencies for use in making studies; provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. ~~Wastewater constituents and characteristics will not be recognized as confidential information.~~ As outlined in 40 CFR Parts 403.8, and 403.14 and under section 308 of the Clean Water Act, all information contained in an Industrial User's file and/or submitted by an Industrial User will be available at all times to the U.S. Environmental Protection Agency.

Information accepted by the City as confidential shall not be transmitted to any person or entity unless the City is required to do so by law and upon notification to the user, except in emergency or extraordinary circumstances. The notification provision of this section shall not be construed to require the consent or approval of the user before such information is released.

Wastewater constituents and characteristics will not be recognized as confidential information.

~~_____~~Information accepted by the CityAgency as confidential shall not be transmitted to any person or entity other governmental agency until and unless the City is required to do so by law and upon prior and adequate notification is given to the user, except in emergency or extraordinary circumstances. The notification provision of this section shall not be construed to require the consent or approval of the user before such information is released. The City shall not be liable in damages to any permit applicant or uUser for any negligent disclosure of any trade secret furnished to the City.

~~4.08~~ ~~_____~~ ~~4.08~~ Special Agreements.—Special agreements and arrangements between the CityAgency and any persons or agencies may be established when, in the opinion of the CityAgency, unusual or extraordinary circumstances compel special terms and conditions. Under no circumstances, however, will any special agreement or arrangement be established which contravenes any federal pretreatment regulation, categorical pretreatment standard, or any other provision of federal law.

4.09 Certification Statements

(a) Certification of Permit Applications, User Reports and Initial Monitoring Waiver—The following certification statement is required to be signed and submitted by uUsers submitting permit applications in accordance with Section 4.02(eb); uUsers submitting baseline monitoring reports under Section 4.01(c) [~~Note: See 40 CFR 403.12(f)~~]; uUsers submitting reports on compliance with the categorical pPretreatment sStandards deadlines under Section 4.01(e) [~~Note: See 40 CFR 403.12(d)~~]; uUsers submitting periodic compliance reports required by Section 4.01(a) – (g) [~~Note: See 40 CFR 403.12(e) and (h)~~], and uUsers submitting an initial request to forego sampling of a pollutant on the basis of Section 4.01(b)(4) [~~Note: See 40 CFR 403.12(e)(2)(iii)~~]. The following certification statement must be signed by an Authorized Representative as defined in Section 1.02(ab):

~~Signature Requirement.~~ 4.09 Signature Requirement. All reports and/or permit applications received and/or required under these regulations shall include the following certification statement, as set forth in 40 CFR 403.6(a)(2)(ii), pursuant to 40 CFR 403.12(i): ~~and shall be signed:~~

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with _____ (a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(b) Annual Certification for Non-Significant Categorical Industrial Users. A facility determined to be a Non-Significant Categorical Industrial User by the Manager pursuant to Section 1.02(~~aa~~jjww)(5) [~~Note: See 40 CFR 403.3(v)(2)~~] must annually submit the following certification statement signed in accordance with the signatory requirements in Section 1.02(ab) [~~Note: See 40 CFR 403.120(f)~~]. This certification must accompany an alternative report required by the Manager:

Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical pPretreatment sStandards under 40 CFR _____, I certify that, to the best of my knowledge and belief that during the period from _____, _____ to _____, _____ [months, days, year]:

(1) The facility described as _____ [facility name] met the definition of a Non-Significant Categorical Industrial User as described in 1.02(~~aa~~jjww)(5); [~~Note: See 40 CFR 403.3(v)(2)~~]

(2) The facility complied with all applicable pPretreatment sStandards and requirements during this reporting period; and

(3) the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period.

This compliance certification is based on the following information.

(c) Certification of Pollutants Not Present. Users that have an approved monitoring waiver based on Section 4.01(b) must certify on each report with the following statement that there has been no increase in the pollutant in its wastestream due to activities of the uUser. [Note: See 40 CFR 403.12(e)(2)(v)] The certification statement signed in accordance with the signatory requirements in Section 1.02(ab).

Based on my inquiry of the person or persons directly responsible for managing compliance with the pPretreatment sStandard for 40 CFR _____ [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of _____ [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under Section 4.01(a).

4.10 Retention of Records. Users subject to the reporting requirements of this ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this ordinance, any additional records of information obtained pursuant to monitoring activities undertaken by the uUser independent of such requirements, and documentation associated with Best Management PracticesBMPs established under Section 2.08.4. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years, with the exception of Dental Amalgam-regulated facilities, where records have to be retained for five (5) years as listed in Section 2.15.2. This period shall be automatically extended for the duration of any litigation concerning the uUser, the City. All reports and/or permit applications shall be signed:

~~) by a responsible corporate officer, if the user submitting the reports is a corporation. For the purpose of this paragraph, a responsible corporate officer means:~~

~~_____ (1) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or~~

~~The _____ (2) the manager of one or more manufacturing,~~

~~production, or operating~~operation facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including ~~employing more than 250 persons or having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where~~gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

~~(b) by a general partner or proprietor if the user submitting the reports is a partnership or sole proprietorship, respectively;~~

~~(c) by a duly authorized representative of the individual designated in paragraph (a) or (b) of this section if:~~

~~(1) The authorization is made in writing by the individual designated in paragraph (a) or (b);~~

~~(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and~~

~~(3) The written authorization is submitted to the CityAgency.~~

~~(d) If an authorization under paragraph (c) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of paragraph (c) of this section shallmust be submitted to the CityAgency prior to or together with any reports to be signed by an authorized representative.~~

~~4.10 Retention of Records. All records, including but not limited to discharge reports, permits, self-monitoring data, pretreatment system process control logs, and relevant correspondence (whether or not required by these regulations) shallmust be maintained by the user for a period of not less than three years. This period of retention shall be extended during the course of any unresolved litigation or at the request of the State Water Resources Control Board or their Regional Boards, or the U.S. Environmental Protection Agency~~EPA~~, or where the u~~U~~ser has been specifically notified of a longer retention period by the Manager. ~~—~~All such records shall be made available for inspection and copying by a duly authorized representative of~~

the CityAgency or any other governmental entity having jurisdiction.

~~4.11~~ ~~4.11~~ Public Notification of Dischargers Found to be in Significant Non-Compliance. -At an interval of not less than once per year, the CityAgency will publish the identities of any user(s) which is (are) found to be in significant non-compliance of any national pretreatment standard, discharge limitation or prohibition, or any other requirement of these regulations. -The definition of significant non-compliance shall be as specified in 40 CFR 403.8(f)(2)(~~viii~~),~~vii~~). The publication shall occur in ~~at~~the newspaper of general having the largest daily circulation that provides meaningful notice within the City. service area of the Agency.

4.12 Notification of Changed Conditions. Each uUser must notify the Manager of any significant changes to the uUser's operations or system which might alter the nature, quality, or volume of its wastewater at least thirty (30) days before the change.

- (a) The Manager may require the uUser to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 4.02(b) of this ordinance.
- (b) The Manager may issue an individual wastewater discharge permit or modify an existing wastewater discharge permit under Section 4.02 of this ordinance in response to changed conditions or anticipated changed conditions.

4.13 Reports of Potential Problems.

- (a) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, a need for a bypass, a Slug Discharge or Slug Load, that might cause potential problems for the POTW, the uUser shall immediately telephone and notify the Manager of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the uUser.
- (b) Within five (5) days following such discharge, the uUser shall, unless waived by the Manager, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the uUser to prevent similar future occurrences. Such notification shall not relieve the uUser of any expense, loss, damage, or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the uUser of any fines, penalties, or other liability which may be imposed pursuant to this ordinance.
- (c) A notice shall be permanently posted on the uUser's bulletin board or other prominent place advising employees who to call in the event of a discharge described in paragraph (a)A, above. Employers shall ensure that all employees, who could cause such a discharge to occur, are advised of the emergency notification procedure.

(d) Significant Industrial Users are required to notify the Manager immediately of any changes at its facility affecting the potential for a Slug Discharge.

~~Notification of Changed Discharge. 4.12 Notification of Changed Discharge. All users, whether or not controlled by permit under the provisions of section 4.02, must notify and obtain approval for any substantial changes in the volume or character of pollutants in their discharges. Each user shall provide notice in advance of any proposed changes in their discharge. This notice is required in order for the City to deny or condition new or increased discharges or changes in the nature of discharges that do not meet applicable pretreatment standards and requirements or when they would cause an NPDES permit violation. The user shall notify the City immediately of any changes that may affect the potential for a slug discharge.~~

~~4.14~~ ~~4.13~~ Notification of Hazardous Waste Discharge.

~~(a) Any~~ ~~(a)~~ All industrial user users discharging any substance which, if otherwise disposed of, would be a hazardous or acutely hazardous waste under 40 CFR 261, ~~shall~~must comply with the reporting requirements of 40 CFR 403.12(p)(1) and (3) unless exempted under the provisions of 40 CFR 403.12(p)(2).

~~(b)~~ ~~(b)~~ In the case of any notification made under section paragraph (a) above, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical, pursuant to 40 CFR 403.12(p)(4). The City. The Agency may accept a copy of a hazardous waste reduction or minimization plan as otherwise required by law.

4.15 Best Management Practices. The City may require submission of information to evaluate the implementation of and/or require the implementation of best management practices (BMPs) as described in Section 2.08.4.

WASTEWATER CHARGES AND FEES

~~5.01~~ ~~5.01~~ ~~Schedule of Charges and Fees.~~ ~~The City's~~ A schedule of charges and fees ~~complies~~ shall be adopted by the Agency which will enable it to comply with the revenue requirements of the State Clean Water Grant Program. ~~Charges and charges~~ and fees ~~are~~ shall be determined in a manner consistent with regulations of the grant program.

~~5.02~~ ~~5.02~~ ~~Classification of Users.~~ ~~Users~~ All users shall be classified by assigning each one to a ~~"User Classification"~~ category according to the principal activity conducted on the ~~user's~~ user's premises and appropriate non-industrial classifications as determined by the ~~City.~~ Agency. The purpose of such classification is to facilitate the regulation of wastewater discharges based on wastewater constituents and characteristics to provide an effective means of source control, and to establish a system of user charges and fees which will ~~ensure~~ insure an equitable recovery of the ~~City's~~ Agency's cost.

~~5.03~~ ~~5.03~~ ~~Types of Charges and Fees.~~ -The charges for each wastewater constituent and characteristic shall be established by the ~~City.~~ Agency and set forth in the ~~City's~~ Agency's schedule of charges and fees, which may include, but not be limited to:

- ~~(a)~~ (a) user classification charges;
- ~~(b)~~ (b) fees for monitoring;
- ~~(c)~~ (c) fees for permit applications;
- ~~(d)~~ (d) appeal fees; or
- ~~(e)~~ (e) charges and fees based on wastewater constituents and characteristics to include industrial cost recovery provisions of the ~~Federal~~ federal Act.

~~5.04~~ ~~5.04~~ ~~Determination of User Charges and Fees.~~ - When user classification charges are established, they shall be based upon a minimum basic charge for each premise, computed on the basis of the characteristics of wastewater from a domestic premise. -The quantitative values for the characteristics, including ~~carbonaceous~~ biochemical oxygen demand (~~CBOD~~, ~~BOD~~), suspended solids (SS), and volume of ~~domestic~~ wastewater (flow), are ~~found in the City's Revenue Program submitted to the State on an annual basis~~ described in the City's ~~Master Fee Schedule.~~ as follows:

- ~~_____~~ BOD ~~170~~ mg/L
- ~~_____~~ SS ~~198~~ mg/L
- ~~_____~~ Flow ~~200~~ gallons/day

~~or as may hereafter be revised from time to time by resolution of the Agency.~~

_____The charges for all classifications of users other than the basic domestic premise shall be based upon the relative difference between the average wastewater constituents and characteristics of that classification as related to those of a domestic premise.

_____The charges and fees established for unclassified permit users shall be based upon the measured or estimated constituents and characteristics of that user which may include, but not be limited to, CBOD~~BOD~~, SS, and volume.

ENFORCEMENT

6.01 Enforcement Response Plan. Enforcement of pretreatment violations will generally be in accordance with the City's Enforcement Response Plan. However, the Manager may take other action against any user when the circumstances warrant. Further, the Manager is empowered to take more than one enforcement action against any noncompliant user.

6.02

~~6.01~~ Notification of Discharge. -Users shall notify the CityAgency immediately upon accidentally discecharging wastes in violation of these regulations and/or discharging any slug loading, to enable countermeasures to be taken by the CityAgency to minimize damage to the Citycommunity sewer, treatment facility, treatment processes, and the receiving waters.

~~_____~~ This notification shall be followed, ~~within five days of the date of occurrence,~~ by a detailed written statement describing the causes of the accidental discharge and the measures being taken to prevent future occurrence, to be received by the City within five calendar days of the date of occurrence.

~~_____~~ Such notification will not relieve users of liability for any expense, loss, or damage to the sewer system, treatment plant, or treatment process, or for any fines imposed on the CityAgency on account thereof under section 13350 of the California Water Code, or for violations of section 5650 of the California Fish and ~~Wildlife~~Wildlife (previously known as California Fish and Game) ~~Game~~ Code.

6.03 Warning Notice. The Manager may issue a warning notice as the first level of written enforcement. Warning notices are written letters sent to iIndustrial uUsers in response to most initial instances of sampling violations, exceedances of local and federal limits, late reports that are less than 4530 days late, and other minor violations. The iIndustrial uUser shall respond in writing within fifteen (15) days of the date of the warning letter unless otherwise indicated by the Manager. This response shall include, at a minimum, an explanation of the reasons/causes of the violation and corrective actions to be implemented by the iIndustrial uUser to prevent future violations.

6.04 Notification of Violation (NOV). When the Manager finds that a uUser has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or order issued hereunder, or any other pPretreatment sStandard or rRequirement, Manager may serve upon that uUser a written Notice of Violation. Within fifteen (15) days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the uUser to Manager. Submission of such a plan in no way relieves the uUser of liability for any violations occurring before or after receipt of the Notice of Violation. ~~Nothing in this Section shall limit the authority of Manager to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.~~

6.05 Administrative Citation. Administrative citations may be issued for violations of the

City of Hayward Municipal Code at the discretion of the ~~City's Compliance Inspector~~Manager. If violations listed on a citation are not corrected within a specified time, fines may be assessed. Fines escalate with each successive citation for uncorrected violations. Violators may appeal an administrative citation and request an administrative hearing per the process defined in Section 7.09 of this document. ~~Administrative citations are typically issued in the field, on the spot, upon the City discovering a violation.~~

6.06 Administrative Order. An administrative consent, show cause, or compliance order may be issued to direct an IU to take a particular step in order to regain compliance. These orders are handled on a case-by-case basis, and there is no standard time frame as to when they are issued.

- (a) Consent Orders. The Manager may enter into Consent Orders, assurances of compliance, or other similar documents establishing an agreement with any uUser responsible for noncompliance. Such documents shall include specific action to be taken by the uUser to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as administrative fines issued pursuant to Section 7.09 of this ordinance and shall be judicially enforceable.
- (b) Show Cause Hearing. The Manager may order a uUser which has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or order issued hereunder, or any other pPretreatment sStandard or rRequirement, to appear before the Manager and show cause why the proposed enforcement action should not be taken. Notice shall be served on the uUser specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the uUser show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least fifteen (15) days prior to the hearing. Such notice may be served on any Authorized Representative of the uUser as defined in Section 1.02(ab). A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the uUser.
- (c) Compliance Orders. When the Manager finds that a uUser has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or order issued hereunder, or any other pPretreatment sStandard or rRequirement, the Manager may issue an order to the uUser responsible for the discharge directing that the uUser come into compliance within a specified time. If the uUser does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a pPretreatment sStandard or rRequirement, nor does a compliance order relieve the uUser of liability for any violation, including any continuing violation. Issuance of a compliance order

shall not be a bar against, or a prerequisite for, taking any other action against the user.

~~Notification of Violation. When the Manager finds that a User has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, Manager may serve upon that User a written Notice of Violation. Within fourteen (14) days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the User to Manager. Submission of such a plan in no way relieves the User of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this Section shall limit the authority of Manager to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.~~

~~6.07 Issuance of Cease and Desist Orders. When the City~~ ~~6.02 Issuance of Cease and Desist Orders. When the Agency~~ finds that a discharge of wastewater has taken place in violation of prohibitions or limitations of these regulations, or the provisions of a Wastewater Discharge Permit, the Manager may issue an order to cease and desist, and direct that those not complying with such prohibitions, limits, requirements, or provisions:

- ~~(a)~~ ~~(a)~~ comply forthwith;
- ~~(b)~~ ~~(b)~~ comply in accordance with a time schedule set forth by the ~~CityAgency~~; or
- ~~(c)~~ ~~(c)~~ take appropriate remedial or preventive action in the event of a threatened violation.

~~6.08~~ ~~6.03~~ ~~Submission of Time Schedule.~~ -When the ~~CityAgency~~ finds that a discharge of wastewater has been taking place in violation of prohibitions or limitations prescribed in these regulations, or wastewater source control requirements, effluent limitations or pretreatment standards, or the provisions of a Wastewater Discharge Permit, the ~~CityAgency~~ may require the user to submit for approval, with such modifications as it deems necessary, a detailed time schedule of specific actions which the user shall take in order to prevent or correct a violation of the requirements.

~~6.09~~ ~~6.04~~ ~~Appeals.~~- Any user, permit applicant, or permit holder affected by any decision, action, or determination, including cease and desist orders made by the Manager, interpreting or implementing the provisions of these regulations or in any permit issued herein, may file with the Manager a written request for reconsideration within ten days of such decision, action, or determination, setting forth in detail the facts supporting the ~~user's~~ request for reconsideration.

~~_____~~ If the ruling made by the Manager is unsatisfactory to the person requesting reconsideration, he or she may, within ten days after notification of ~~CityAgency~~ action, file a written appeal to the ~~City Council.Agency's governing body.~~ The written appeal shall be heard by the ~~City Council, body~~ within 30 days ~~from the date of its filing date.~~ ~~A. The Agency's~~

~~governing body shall make a~~ final ruling on the appeal shall be rendered within ~~10~~ten days of the close of the hearing. -The ~~Manager's~~Manager's decision, action, or determination shall remain in effect during such period of reconsideration.

~~6.10~~ ~~_____~~ ~~6.05~~ Notices to Employees. -In order that employees of users are~~be~~ informed of City~~Agency~~ requirements, users shall make available to their employees copies of these regulations together with such other wastewater information and notices ~~which may be furnished by the Agency from time to time~~ directed toward more effective water pollution control which may be periodically furnished by the City.- A notice shall be furnished and permanently posted on the ~~user's~~user's bulletin board advising employees whom to call in case of an accidental discharge in violation of these regulations, as listed below:

<u>Weekdays, 8 AM – 5 PM:</u>	<u>Water Pollution Source Control, 510-881-7900s-</u>
<u>Weekdays after 5 PM, and Weekends:</u>	<u>Water Pollution Control Facility-, 510-293-5398</u>
<u>Police, Fire, or Medical Emergencies:</u>	<u>911</u>

~~_____~~ ~~6.06~~ Preventive Measures. ~~Any direct or indirect connection or entry point for persistent or deleterious wastes to the user's plumbing or drainage system should be eliminated. Where such action is impractical or unreasonable, the user shall appropriately label such entry points to warn against discharge of such wastes in violation of these regulations.~~

Chapter 7

ABATEMENT

~~7.01~~ ~~7.01~~ Public Nuisance.— Discharge of wastewater in any manner in violation of these regulations or of any order issued by the Manager as authorized by these regulations, is hereby declared a public nuisance and shall be corrected or abated as directed by the Manager. —Any person creating a public nuisance shall be subject to provisions of CityAgency codes or ordinances governing such nuisance.

~~7.02~~ ~~7.02~~ Injunction. ~~The City Whenever a discharge of wastewater is in violation of the provisions of these regulations or otherwise causes or threatens to cause a condition of contamination, pollution, or nuisance, the Agency~~ may petition the superior court for the issuance of ~~a~~ preliminary or permanent injunctive relief~~injunction~~, or both, as may be appropriate, for noncompliance by users with pretreatment standards and requirements. Noncompliance relates both to discharge and non-~~in restraining the continuance of such discharge violations.~~

~~7.03~~ ~~7.03~~ Damage to Facilities. —When a discharge of wastes causes an obstruction, damage, or any other impairment to CityAgency facilities, the Cityagency may assess a charge against the user for the work required to clean or repair the facility and add such charge to the user's~~user's~~ charges and fees.

~~7.04~~ ~~7.04~~ Civil Penalties.— Any person who violates any provision of these regulations or permit conditions, or who discharges wastewater which causes pollution, or who violates any cease and desist order, prohibition, effluent limitation, national ~~standard of~~ performance, pretreatment or toxicity standard, shall be liable civilly to penalties imposed by the City for Agency against which the violation(s). ~~occurs.~~— The City Attorney~~attorney of the Agency~~, upon order of the City Council~~Agency's governing body~~, shall petition the superior court to impose, assess, and recover such sums as may be applicable. —In addition, the CityAgency may refer any violations of these regulations to the office of the Alameda County District Attorney for civil prosecution under any applicable statute or provision of law.

~~7.05~~ ~~7.05~~ Criminal Penalties.— Any person who violates any provision of these regulations, or of a permit or a cease and desist order issued pursuant to these regulations, is guilty of a public offense. —The classification of such public offense and the punishment therefor shall be as provided by regulations of the CityAgency.

~~7.06~~ ~~7.06~~ Falsifying Information. —Any person who knowingly makes any false ~~statement~~statements, representation, record, report, plan, or other document filed with the CityAgency, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under these regulations, shall be punished in accordance with the CityAgency codes or ordinances governing such falsifications. —The City Attorney~~attorney of the Agency~~, upon order of the City Council, shall petition the Superior Court to impose, assess, and recover such sums as may be applicable.

~~of the Agency's governing body, shall petition the Superior Court to impose, assess, and recover such sums as may be applicable.~~

~~7.07~~ ~~7.07~~ Termination of Service. —The CityAgency may revoke any Wastewater Discharge Permit, or terminate or cause to be terminated wastewater service to any premises, if a violation of any provision of these regulations is found to exist or if a discharge of wastewater causes or threatens to cause a condition of contamination, pollution, or nuisance as defined in these regulations. Furthermore, whenever any discharge of wastewater is deemed by the CityAgency to be an imminent and significant threat to the operation of the wastewater treatment plant, ~~an imminent and significant threat to~~ the health and safety of CityAgency personnel, or the public, or ~~an imminent and significant threat to~~ the quality of the waters of the state, the CityAgency may, without prior notice and by whatever means or combination of means available, terminate wastewater service to any premises. —This provision is in addition to other statutes, rules, or regulations, authorizing termination of service for delinquency in payment.

~~7.08~~ Legal Authority to Protect POTW. ~~Impose Administrative Fines.~~ — In accordance with section 54739 of the California Government Code, the Cityagency may require any of the following: ~~∴ (Added by Ord. 94 24, adopted October 11, 1994)~~

~~(a)~~ (a) —Pretreatment of any industrial waste which the Citylocal agency determines is necessary in order to meet standards established by the federal or California state government or other regulatory agencies or which the Citylocal agency determines is necessary in order to protect its treatment works or the proper and efficient operation thereof or the health and safety of its employees or the environment.

~~(b)~~ (b) —The prevention of the entry of such industrial waste into the collection system and treatment works.

~~(c)~~ The payment of excess costs incurred by the City as a result of entry of such industrial waste into the collection system and treatment works.

~~7.09~~ 7.09 Administrative Fine Procedure.

~~(a)~~ In accordance with section 54740.5 of the California Government Code, the City ~~(Added by Ord. 94 24, adopted October 11, 1994)~~

~~(a)~~ The agency may issue an administrative complaint to any person who violates any requirement adopted or ordered by the Cityagency pursuant to ~~paragraphs~~paragraph (a) and (b) of Section 7.08.— The administrative complaint shall allege the act or failure to act that constitutes the violation of the City'sagency's requirements, the provisions of law authorizing civil liability to be imposed, and the proposed civil penalty.

~~(b)~~ (b) —The administrative complaint shall be served by personal delivery or certified mail on the person subject to the City'sagency's discharge requirements, and shall inform the person served that a hearing shall be conducted

within 60 days after the person has been served. The hearing shall be before the ~~City Manager of the agency~~ or his or her designee, hereafter ~~"hearing officer"~~. The person who has been issued an administrative complaint may waive the right to a hearing, in which case the ~~City agency~~ shall not conduct a hearing. A person dissatisfied with the decision of the hearing officer may appeal to the ~~City Council governing board of the agency~~ within 30 days of notice of the hearing officer's decision.

~~(c)~~ ~~(e)~~ — If after the hearing or appeal it is found that the person has violated reporting or discharge requirements, the hearing officer may assess a civil penalty against that person. In determining the amount of the civil penalty, the hearing officer or ~~City Council board~~ may take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the economic benefit derived through any noncompliance, the nature and persistence of the violation, the length of time over which the violation occurs and corrective action, if any, attempted or taken by the discharger.

~~(d)~~ ~~(d)~~ — Civil penalties may be imposed by the ~~City agency~~ as follows:

~~(1)~~ ~~(1)~~ — In an amount which shall not exceed \$2,000 for each day for failing or refusing to furnish technical or monitoring reports.

~~(2)~~ ~~(2)~~ — In an amount which shall not exceed \$3,000 for each day for failing or refusing to timely comply with any compliance schedule established by the ~~City local agency~~.

~~(3)~~ ~~(3)~~ — In an amount which shall not exceed \$5,000 per violation for each day for discharges in violation of any waste discharge limitation, permit condition, or requirement issued or adopted by the ~~City local agency~~.

~~(4)~~ ~~(4)~~ — In an amount which does not exceed \$10 per gallon for discharges in violation of any suspension, cease and desist order or other orders, or prohibition issued, reissued, or adopted by ~~City the agency~~.

~~(5)~~ ~~(5)~~ — The amount of any civil penalties imposed under this section which have remained delinquent for a period of 60 days shall constitute a lien against the real property of the discharger from which the discharge originated resulting in the imposition of the civil penalty. The lien provided herein shall have no force and effect until recorded with the county recorder and when recorded shall have the force and effect and priority of a judgment lien and continue for 10 years from the time of recording unless sooner released and shall be renewable in accordance with the provisions of sections 683.110 to 683.220, inclusive, of the Code of Civil Procedure.

~~(e)~~ ~~(e)~~ — All monies collected under this section shall be deposited in a special account of the ~~City agency~~ and shall be made available for the monitoring, treatment, and control of discharges into the ~~City's agency's sanitation or sewer~~

system or for other mitigation measures.

(f) ~~_____~~ ~~(f)~~ Unless appealed, orders setting administrative civil penalties shall become effective and final upon issuance thereof, and payment shall be made within 30 days. Copies of these orders shall be served by personal service or by registered mail upon the party served with the administrative complaint and upon other persons who appeared at the hearing and requested a copy.

(g) ~~_____~~ ~~(g)~~ The City~~agency~~ may, at its~~is~~ option, elect to petition the Superior Court~~superior court~~ to confirm any order establishing civil penalties and enter judgment in conformity therewith in accordance with the provisions of sections 1285 to 1287.6, inclusive, of the Code of Civil Procedure.

(h) ~~_____~~ ~~(h)~~ No penalties shall be recoverable under this section for any violation for which civil liability is recovered under Section 7.04.

(i) ~~_____~~ ~~(i)~~ Any party aggrieved by a final order issued by the City Council~~governing board of the agency~~ under this section, after granting review of the order of a hearing officer, may obtain review of the order of the Council~~board~~ in the Superior Court~~superior court~~ by filing in the court a petition for writ of mandate within 30 days following the service of a copy of the decision and order issued by the Council~~board~~. Any party aggrieved by a final order of a hearing officer issued under this section, for which the Council~~board~~ denies review, may obtain review of the order of the hearing officer in the Superior Court~~superior court~~ by filing in the court a petition for writ of mandate within 30 days following service of a copy of a decision and order denying review of the Council~~board~~.

(j) ~~_____~~ ~~(j)~~ If no aggrieved party petitions for writ of mandate within the time provided by this section, an order of the Council~~board~~ or a hearing officer shall not be subject to review by any court or agency, except that the Council~~board~~ may grant review on its own motion of an order issued under this section after the expiration of the time limits set by that section.

(k) ~~_____~~ ~~(k)~~ The evidence before the court shall consist of the record before the Council~~board~~, including the hearing officer's~~officer's~~ record, and any other relevant evidence which, in the judgment of the court, should be considered to effectuate and implement policies of Title 5, Division 2 of the Government Code. In every such case the court shall exercise its independent judgment on the evidence.

(l) ~~_____~~ ~~(l)~~ Except as otherwise provided in this section, subdivisions (e) and (f) of section 1094.5 of the California Code of Civil Procedure shall govern proceedings pursuant to this section.

Chapter 8

SEVERABILITY

_____ If any provision of these regulations or the application to any person or circumstances is held invalid, the remainder of the regulations or the application of such provisions to other persons or other circumstances shall not be affected.

Section 2. SEVERABILITY. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 3. EFFECTIVE DATE. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

IN COUNCIL INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the _____ day of _____, 2013, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the _____ day of _____, 2013, by the following votes of members of said City Council.

AYES: _____ COUNCIL MEMBERS:
_____ MAYOR:

NOES: _____ COUNCIL MEMBERS:

ATTEST: _____ COUNCIL MEMBERS:

ABSENT: _____ COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

DATE: December 3, 2013

TO: Mayor and City Council

FROM: Director of Public Works – Utilities & Environmental Services

SUBJECT: Introduction of an Ordinance to Amend Hayward Municipal Code Related to Surcharge for Water Customers Outside of the City

RECOMMENDATION

That Council:

1. Introduces the attached ordinance amending Chapter 11, Section 11-2.40 of the Hayward Municipal Code related to the surcharge on water service for customers outside of the City; and
2. Adopts the attached resolution approving a decrease in the existing surcharge from 50% to 15% on water service for customers outside of the City and amending the Master Fee Schedule.

SUMMARY

In response to a request from affected area residents, the City Council directed staff to determine the appropriate surcharge for water service provided to customers outside of the City. Based on an independent review, staff recommends that the surcharge be decreased from the current 50% to 15%. This surcharge will be sufficient to recover the costs for required additional services that the City provides to properties outside the City, primarily related to enhanced pipeline flushing, to ensure a high level of drinking water quality.

BACKGROUND

Water rates are adopted annually by the City Council to recover the costs of providing water service to residents and businesses. Expenses that must be recovered include the wholesale costs of purchasing water from the San Francisco Public Utilities Commission (SFPUC), operation and maintenance of the water distribution system, costs of replacing infrastructure as needed, and debt service for financing of infrastructure. Each year, the City calculates its revenue requirements and determines equitable rates for service such that all customers pay for services received, without one customer group subsidizing another.

Hayward has historically provided water service to a small number of customers outside of the City limits. Currently, just over 200 such properties, the vast majority of which are located in what is known as the Castle Homes area, receive Hayward water. Castle Homes properties are located in unincorporated Alameda County, generally along Fairview Avenue, with Star Ridge Road (formerly East Avenue), Amyx Court, Arbutus Court, Quercus Court, Clover Road, China Court and Picea Court being among the affected streets. Water is provided to these homes in accordance with a 1954 agreement that committed the City to delivering up to 216 gallons per acre per day, or 172,800 gallons per day, on average.

The City's Municipal Code places a surcharge of 50% on the total charges for water service supplied to customers outside of the City limits. Presumably, the intent of this provision, which has been in place for several decades, is to recover additional costs to the City for providing service to customers who, depending on their location, may live some distance from the City limits. Another factor that may have played a role in establishing the surcharge is that early in the development of the Hayward Water System, there was greater potential for the City's General Fund to support water-related activities. For example, some reservoirs may have been constructed on City-owned land without payment to the General Fund. Since customers outside of the City limits had not contributed to the tax base that enabled the acquisition of these properties, the surcharge was a means of collecting a share of the costs from those property owners.

At the July 9, 2013 public hearing to consider water and sewer rates for FY 2014, the surcharge was questioned by Castle Homes residents, and the Council directed staff to evaluate whether the 50% surcharge is still appropriate. In order to develop an impartial evaluation, staff engaged the consulting firm of West Yost Associates (WYA) to prepare a study on the additional costs incurred by the City to provide water service to the Castle Homes area and to recommend an appropriate surcharge to recover these costs. WYA is currently updating the City's Water Distribution System Master Plan and is familiar with the water system and the level of effort needed to maintain it.

DISCUSSION

Additional Costs Related to Water Quality in the Castle Homes Area

The focus of the WYA study was the effort needed to ensure that water delivered to Castle Homes customers meets the highest level of drinking water quality standards, despite the challenges in maintaining water quality stemming from the design of the Castle Homes water distribution system. The majority of the Hayward Water System is "looped," that is, the pipelines are designed so that water moves through a grid system and thereby remains fresh. Water service to the Castle Homes area, on the other hand, is mainly provided through excessively long dead-end pipelines, without the benefit of looping, and thus more effort is needed to maintain drinking water quality.

The chief water quality concern in this area is chlorine residual, which is an indicator of whether sufficient levels of disinfectant are present. Until very recently, results from the Star Ridge Road sampling station have been particularly problematic, with chlorine residuals sometimes falling below acceptable levels. While the low levels are not directly related to the water quality, staff takes corrective actions to increase low chlorine concentrations to ensure that no violations occur.

Prior to 2004, staff could perform two actions to address low residual chlorine: 1) increase the chlorine dosage in the reservoirs by direct addition; and 2) flush the pipelines to bring fresh water from the distribution system. Flushing involves opening fire hydrants to allow the release of a high volume of water so that fresh water can be brought into the pipeline. However, in 2004, the SFPUC made a modification to the Regional Water System and began using chloramine as a disinfectant, rather than chlorine alone, in order to meet a pending change in Department of Public Health water quality regulations.

There are water quality benefits to using chloramine, a combination of chlorine and ammonia, versus simple chlorine, in that lower doses of disinfectant are needed and thus there is less chance of disinfectant byproducts forming in the water. However, chloramine's chemistry in the water is complicated and requires close monitoring and management. Also, it is no longer possible to add extra doses of chlorine because the balance between chlorine and ammonia is very sensitive and adding chlorine, in simple terms, can cause problems if the balance is incorrect. For these reasons, the City has engaged in more frequent pipeline flushing in Castle Homes area since the conversion, until recently when the SFPUC began increasing the disinfectant dosage. It appears that, for now, chlorine residuals have stabilized. Therefore, there has been a decrease in the amount of flushing in the last few months, although there is still a need for it at times.

City costs associated with pipeline flushing include the labor of two employees, water usage charges, and equipment usage. Flushing in the Castle Homes area is complicated by constraints on using the sewer and storm drain systems, which are not owned by the City of Hayward. The entities that own these systems prohibit the discharge of flushed water, so typically, the water is stored in tanker trucks and hauled away for disposal, adding time and labor and equipment costs.

Alternatives for Maintaining Water Quality

Staff investigated alternative strategies to address the water quality issues in the Castle Homes area. The optimal solution would be to loop the water lines, which is standard practice today and has been incorporated into most of the City's Water System. However, given the location and the topography of the area, this would be a very challenging undertaking. Preliminary estimates for this work would cost in the neighborhood of \$4 million, requiring a significant funding commitment on the part of property owners. Funding these improvements on a 20-year basis would result in annual repayments of \$200,000, based on present value. Representatives of the Castle Home property owners have indicated to staff that they do not wish to pay for system improvements, such as looping, at this time.

Staff will research the availability of grant funding and low interest loans for which a water system looping project may be eligible and return to Council if such a funding mechanism is identified. In the meantime, however, given the cost and lack of funding, the short- to medium-term solution seems to be to continue flushing the lines as needed, with costs to be recovered in the form of the surcharge.

It should be pointed out that, while most of the City water system is looped, there are areas within the City limits where dead-end lines exist. However, these lines tend to be shorter than those which serve Castle Homes, and because of their location, staff has other options for managing water quality and ensuring adequate disinfectant levels.

Recommended Surcharge for Water Service Outside City Customers

WYA examined City records for additional flushing for a two-year period, determining that two years of data would provide a representative sample of the level of effort. Given the fact that, as stated above, the level of maintenance effort has decreased recently, the total associated costs are about \$44,500 over the two years. Based on current water rates, which are significantly higher than they were a few years ago, the study determined that a surcharge of 15% would generate sufficient revenue to pay for the additional costs at this time.

While a 15% surcharge may seem to be a substantial decrease from the current percentage, it is important to consider it in the context of the significant increases in water rates over the past few years, due mainly to the increased wholesale water cost. In FY 2008, the in-City cost of purchasing 18 hundred cubic feet of water (ccf) or 225 gallons per day, the average single-family usage in a two-month billing period, was \$52, with the 50% surcharge amounting to \$26. That same volume of water in FY 2013 cost in-City customers \$95, with a surcharge of \$47 for outside customers. This near-doubling of water rates, coupled with less frequent pipeline flushing, means that sufficient revenue to meet current funding requirements can be generated with a lower percentage.

Proposed Changes to the Hayward Municipal Code and Master Fee Schedule

Section 11-2-40 of the Hayward Municipal Code specifically states that a surcharge of 50% be added to the cost of water service provided outside the City. As noted above, staff recommends that that Council reduce this percentage to 15%. Staff further recommends that the authority to place the surcharge on water bills be retained in the Municipal Code, while the specific percentage be removed and included instead in the Master Fee Schedule. Staff intends to review the surcharge percentage as part of the regular periodic water rate analysis, and to propose adjustments as needed to reflect the level of effort needed to serve outside City customers. Including the percentage in the Master Fee Schedule provides the Council with greater flexibility to make adjustments as appropriate in the future, as part of adopting the water rates, without the need for periodic amendments to the ordinance.

Fire Flows in Castle Homes Area

As a related point of interest, staff is currently updating the Water Distribution System Master Plan to evaluate system needs to meet current and future water demands. As part of this effort, the City consultant assessed the adequacy of fire flows to determine if water pressure throughout the service area is sufficient. The study has shown that, while fire flows in the Castle Homes area seem to be adequate for existing houses and future homes up to a generous 3,600 square feet each, they may not always be adequate to protect larger home construction. Currently, there seems to be a trend in the Castle Homes area of building very large homes, with some houses completed and occupied, and some under construction. Staff will need to work with the responsible jurisdictions to ensure that new building permits for home construction in this area are reviewed by City staff for fire flow adequacy and appropriate limitations in size, or to ensure that necessary mitigation measures are implemented.

ECONOMIC IMPACT

The City Council was clear in its direction that in-City customers should not be impacted by any additional costs incurred by the City to provide water service to outside customers. At this time, staff

believes that the 15% surcharge will be sufficient to maintain water quality standards in the Castle Homes area. The surcharge will be reviewed in the future, as part of the City's water rate analysis, to ensure that it continues to generate enough revenue to meet the operational needs of the system. Customers outside of the City limits will experience an average reduction in water service costs of about 23%. The proposed surcharge would result in a revenue decrease of about \$50,000 per year, which would need to be recovered from all residential and business customers. This is about 0.17% of current water sales revenue, or approximately \$0.10 per month per customer (\$0.07 per month, per residential customer).

FISCAL IMPACT

The proposed 15% surcharge is expected to generate about \$25,000 annually, which staff believes is sufficient to pay for the additional costs associated with providing water service outside of the City limits. The percentage will be reviewed periodically, as part of water rate analyses, to ensure it is appropriate to the level of effort required.

PUBLIC CONTACT

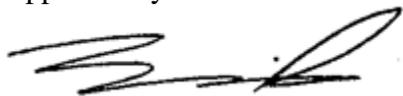
Staff met with representatives of Castle Homes property owners on two occasions to discuss the surcharge, exchange ideas and information, and review the preliminary findings of the study. The meetings were productive and staff will continue to communicate with property owners on issues related to their water service.

NEXT STEPS

If approved, the ordinance and revised surcharge percentage will be effective 30 days after adoption. The new surcharge would be implemented on subsequent water bills.

Prepared and Recommended by: Alex Ameri, Director of Public Works – Utilities & Environmental Services

Approved by:



Fran David, City Manager

Attachments:

- | | |
|---------------|--|
| Attachment I | Ordinance Amending Chapter 11, Section 11-2.40 of the Hayward Municipal Code |
| Attachment II | Resolution Approving Surcharge for Water Service Outside of the City |

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 2 OF THE HAYWARD MUNICIPAL CODE RELATING TO METERED SERVICE CHARGES OUTSIDE CITY

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Upon the adoption of this Ordinance, Article 11, Chapter 2, Section 11-2.40 of the Hayward Municipal Code, relating to metered service charges outside City, is hereby amended to read as follows:

SECTION 11-2.40 METERED SERVICE CHARGES OUTSIDE CITY. For water supplied through a meter and used or consumed outside the City, every customer shall pay for each billing the following charges:

- a. A service charge based on the size of the meter.
b. An amount based on the number of cubic feet of water supplied during each billing period.
c. A surcharge on the sum of the service charge and the usage charge based on the cubic feet of water supplied as set forth in subparagraphs a. and b. above, at a percentage to be determined from time to time by the City Council.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

HAYWARD CITY COUNCIL
RESOLUTION NO. _____

Introduced by Council Member _____

RESOLUTION AMENDING THE MASTER FEE SCHEDULE AND
APPROVING A SURCHARGE ON WATER SERVICE OUTSIDE CITY

WHEREAS, Section 15273 of the California Environmental Quality Act Guidelines states that CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares and other charges by public agencies which the public agency finds are for the purpose of:

- 1. Meeting operating expenses, including employee wage rates and fringe benefits,
- 2. Purchasing or leasing supplies, equipment or materials,
- 3. Meeting financial reserve needs and requirements, or
- 4. Obtaining funds for capital projects necessary to maintain service within existing service areas.

WHEREAS, the City Council finds and determines that this action is exempt from CEQA based on the foregoing provisions.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby amends the Master Fee Schedule and approves a surcharge equal to 15 percent of sum of the service charge and the water usage charge, for all water supplied through a meter and used or consumed outside the City.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DATE: December 3, 2013

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT: Conditional Authorization of Issuance of Multi-Family Housing Revenue Bonds (Hayward Senior Housing Phase II aka B & Grand Affordable Senior Housing Project) 2013 Series A and Execution of Related Documents

RECOMMENDATION

That the City Council:

- a) Adopts the attached resolution conditionally authorizing the issuance of up to \$5,500,000 in tax-exempt multifamily housing revenue bonds, to assist in the development of the Hayward Senior Housing Phase II Project; and
- b) Conditionally authorizes the City Manager to execute implementing documents in connection with the proposed bond issuance.

BACKGROUND

In July 2010, SCS Development, dba Citation Homes Central, donated various parcels to the City's former Redevelopment Agency (the "Former RDA") to meet part of its Inclusionary Housing Ordinance (the "Inclusionary Ordinance") obligations in connection with the Cannery development. The donated property included three small parcels located at the corner of B and Grand Street, with addresses 581, 585, and 597 B Street, totaling nearly one half acre (the "Site"). Due to the Site's small size, its relatively irregular shape, and its proximity to the existing senior housing project located at the corner of C and Grand Streets ("Hayward Senior Housing"), built and operated by Eden Housing, Inc. (Eden), the City chose to partner with Eden to develop the Site with twenty-two (22) additional affordable senior housing units (the "Project"). The project would complement the adjacent Hayward Senior Housing development and allow for cost savings for the development of the Project through shared facilities and parking.

The Former RDA conveyed the Site to the City in March 2011. The City later conveyed the Site to the Housing Authority of the City of Hayward (the "Authority"), in compliance with Health and Safety Code 34176 (RDA dissolution statute) and the requirement that all housing assets of the Former RDA transfer to the agency assuming the housing functions of the Former RDA.

On March 22, 2011, the Council approved the Project's entitlements.¹ At the same meeting, the Council and the Authority Board members approved certain financing for the Project and authorized the City Manager/Executive Director to negotiate and execute a Disposition and Development Agreement (DDA) between Eden and the Authority to memorialize the conditions to transfer the Site to Eden.² The DDA was executed on June 10, 2011. The financing approved in March 2011 for this Project was never utilized because Eden requested that the funds allocated to this Project by the City in 2011 be transferred to the South Hayward BART Project. The City accommodated this request.

As required by the DDA, Eden submitted a funding application to the Department of Housing and Urban Development (HUD) for Section 202 – Supportive Housing for the Elderly Program (HUD 202) funding. HUD initially rejected the application, but later, in 2012, issued a funding award to the Project that will include a Capital Advance provided at the end of construction in the approximate amount of \$3.5 million. However, switching the originally planned funds from the Project to the South Hayward BART Project resulted in a significant funding gap. Therefore, at the request of Eden, on January 22, 2013, Council conditionally approved a loan of \$775,000 HOME Investment Partnership Act ("HOME") Program funds and a \$1,100,000 loan of Housing Development Action Grant ("HODAG") Program funds to fill that gap.³ The January 22, 2013 staff report provides details regarding the structure of these loans.

DISCUSSION

Project Financing In addition to the HUD 202 Capital Advance and the City-approved financing, the Project financing includes approximately \$3.9 Million in Low Income Housing Tax Credits (Tax Credits) and up to \$5.5 Million in Tax-Exempt Multifamily Housing Revenue Bonds (Bonds), the largest source of external financing for the Project. The Bonds will fund construction of the Project and will be repaid from the permanent funding sources, as further described below.

The Bond proceeds will be structured as a construction loan to Eden with a minimum 24-month and a maximum 36-month term. The entire Bond loan (principal and interest) will be paid off at the end of the term both from the HUD 202 Capital Advance and the Tax Credits. The following is a summary of the permanent funding sources for the Project⁴:

1 The report is available at: <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2011/CCA11PDF/cca032211full.pdf>. See item No. 7

2 The report is available at: <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2011/CCA11PDF/cca032211full.pdf>. See item No. 8

3 The report is available at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2013/CCA13PDF/cca012213full.pdf>. See item No. 4

4 This does not include the value of the land estimated at approximately \$600,000, as the land will be donated to Eden for \$1.00.

Sources	Amount
HUD Section 202 Capital Advance	\$3,494,200
City of Hayward HODAG Loan	\$1,100,000
City of Hayward HOME Loan	\$775,000
County of Alameda NSP2 Loan	\$400,000
Affordable Housing Program (AHP)	\$210,000
Tax Credit Equity (from Investor)	\$3,949,124
Total:	\$9,928,324

The Bonds Eden has requested that the City serve as issuer for the Bonds in an amount not to exceed \$5,500,000. In order to do so, on March 26, 2013, the City Council conducted a Tax Equity and Fiscal Responsibility Act of 1985 (TEFRA) hearing and approved a resolution of inducement for federal tax purposes, authorizing the issuance of Bonds for the Project.⁵ The Bonds are qualified private activity bonds which require an allocation of private activity volume cap from the State. Thus, at the March 26, 2013 meeting, staff also requested authorization from the City Council to apply to the California Debt Limit Allocation Committee (CDLAC) for an allocation of private activity bonds. On May 10, 2013, CDLAC issued a “forward commitment” of Bonds to the City upon review of the application and a determination that the Project meets the program requirements. It is expected that CDLAC will issue a final allocation of Bonds approximately a week from the date of this report.

In general, the City would not approve a bond issuance unless a bond allocation has been awarded. However, in order to be able to issue the Bonds before the end of 2013 to meet other financing requirements, staff is requesting a conditional approval of the Bonds – contingent upon a final CDLAC allocation, which is expected to occur on December 11, 2013.

Eden has accepted a proposal from Silicon Valley Bank (SVB) to purchase the Bonds on a private-placement basis. The Bond Issuance and Pledge Agreement between the City and SVB, as the City’s fiscal agent and holder of the Bonds, provides that the City does not back the bonds and is not liable to make bond payments under any circumstances. Thus, the City is free of any responsibility or obligation to pay principal or interest on the Bonds. In addition, the City’s credit worthiness is not involved in or affected by this transaction. In other words, the Bonds would be limited special obligations of the City, meaning that the City simply acts as a conduit for the Bond issuance process and is not financially responsible for repayment.

Affordable homes for seniors for fifty-five years As mentioned above, the Bonds will be complemented by non-competitive 4% Tax Credits. When used together, both programs provide the most favorable financing for the Project to effectively leverage the City’s funds. In addition to the Capital Advance, the HUD 202 Program also provides project rental assistance funds to cover the difference between the HUD-approved operating cost for the Project and the tenants' contribution towards rent. This relatively steady source of income from the HUD 202 Program, the combination of Bonds and Tax Credits, and the favorable financing terms of the other financing sources listed above, will allow Eden to set rents at 30% of the tenant’s income, which

⁵ The report is available at: <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2013/CCA13PDF/cca032613full.pdf>. See item #7

will allow the Project to serve very low-income seniors. Twenty-one (21) units will be restricted for occupancy by income-eligible seniors and one (1) unit will be reserved for the Project's property manager. The different layers of Project financing described in this report will result in the recordation of covenants against the Project by each lender or funder involved. These covenants will overlap or complement each other, which will guarantee that all the units remain affordable for fifty-five (55) years to income-eligible seniors.

The attached bond resolution conditionally authorizes the issuance of the Bonds and authorizes the City Manager to execute the associated Bond documents, which are on file in the office of the City Clerk. The resolution also names the law firm of Jones Hall as bond counsel and CSG Advisors as financial advisor to the City in connection with the issuance of the Bonds.

ECONOMIC IMPACT

As mentioned in previous staff reports in connection with the Project (see footnotes), the Project will help the City meet its affordable housing obligations from the State's Regional Housing Needs Allocation (RHNA) and will help the City meet the housing needs of seniors, a growing segment of the population.

Eden will pay prevailing wages during construction and has agreed to a best effort that 20% local trade hiring and materials purchases will occur within Hayward.

FISCAL IMPACT

The issuance of bonds does not represent a financial impact to the General Fund and the General Fund is not responsible for repayment of these bonds. All costs associated with issuance of the bonds will be reimbursed through bond proceeds, including the City's fees for bond counsel, legal counsel, and its financial advisor. Also, the City will receive annual administrative fees throughout the Project's fifty-five year affordability period. These fees will help to offset some of the City staff costs associated with implementation of the Project. Particularly, these fees will help to offset City staff costs related to its ongoing monitoring of the Project's affordability, occupancy, maintenance, and management restrictions stemming from the sources of funding utilized by the City to facilitate the development of this Project. These sources of funding include the City's Inclusionary Housing Ordinance, the State's Multifamily Housing Revenue Bonds program, and the federal HOME and HODAG programs.

NEXT STEPS

If the City Council approves the attached resolution, the financing will be scheduled to close before the end of the year. Construction work is expected to commence soon after and to be completed in the summer or early fall of 2015.

Prepared by: Omar Cortez, Housing Development Specialist

Recommended by: Kelly McAdoo, Assistant City Manager

Approved by:



Fran David, City Manager

Attachment I Resolution Authorizing the Issuance of Bonds and Related Actions

RESOLUTION NO. 13-___

**RESOLUTION OF THE CITY OF HAYWARD AUTHORIZING THE
ISSUANCE, SALE AND DELIVERY OF CITY OF HAYWARD MULTIFAMILY
HOUSING REVENUE BONDS (HAYWARD SENIOR HOUSING PHASE II) 2013
SERIES A, AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND
ISSUANCE AND PLEDGE AGREEMENT, A LOAN AGREEMENT AND A
REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS, AND AUTHORIZING THE EXECUTION AND DELIVERY OF
AND APPROVING OTHER RELATED DOCUMENTS AND APPROVING
OTHER RELATED ACTIONS IN CONNECTION THEREWITH**

WHEREAS, Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as the same may be amended (the "Act"), and City of Hayward Ordinance No. 81-023, adopted on June 16, 1981 and codified at Article 10 of Chapter 8 of the City of Hayward Municipal Code, as the same may be amended (the "Ordinance" and together with the Act, the "Bond Law") authorizes the City of Hayward (the "City") to incur indebtedness for the purpose of financing the acquisition, construction and development of multifamily rental housing facilities to be occupied in whole or in part by persons of low and very low income; and

WHEREAS, the City has been requested to issue its Multifamily Housing Revenue Bonds (Hayward Senior Housing Phase II) 2013 Series A (the "Bonds") in accordance with the Bond Law, the proceeds of which are proposed to be used to make a loan to B Grand, L.P., a California limited partnership (the "Borrower"), to finance the acquisition and construction of a 22-unit multifamily rental housing project commonly known as Hayward Senior Housing Phase II, located at 581-597 B Street, Hayward, California, (the "Project"); and

WHEREAS, there have been placed on file with the City Clerk prior to this meeting the following documents and agreements in furtherance of the transactions described above:

- (1) A proposed form of Bond Issuance and Pledge Agreement (the "Pledge Agreement"), between the City and Silicon Valley Bank, as fiscal agent (the "Fiscal Agent");
- (2) A proposed form of Loan Agreement among the City, the Fiscal Agent and the Borrower (the "Loan Agreement"); and
- (3) A proposed form of Regulatory Agreement and Declaration of Restrictive Covenants between the City and the Borrower (the "Regulatory Agreement");

WHEREAS, the City has submitted an application to the California Debt Limit Allocation Committee for an allocation of private activity bond volume cap in an amount sufficient to provide for the issuance of the Bonds (the "Allocation");

WHEREAS, all other conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of the Bonds as contemplated by this resolution and the documents referred to herein exist, have happened and have been performed in due time, form and manner as required by the laws of the State of California, including the Act.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward, as follows:

Section 1. The City hereby finds and declares that the above recitals are true and correct.

Section 2. Pursuant to the Act and the Pledge Agreement, revenue bonds of the City, designated as "City of Hayward Multifamily Housing Revenue Bonds (Hayward Senior Housing Phase II), 2013 Series A" in an aggregate principal amount not to exceed \$5,500,000 (the "Bonds"), are hereby authorized to be issued in draw-down form or all at one time. The Bonds shall be executed by the manual or facsimile signature of the City Manager of the City, and attested by the manual or facsimile signature of the City Clerk of the City, in the form set forth in and otherwise in accordance with the Pledge Agreement. The issuance of the Bonds or any portion thereof shall be contingent upon the receipt of the Allocation from the California Debt Limit Allocation Committee and the principal amount of the Bonds shall not exceed the amount of the Allocation.

Section 3. The form of Pledge Agreement on file with the City Clerk is hereby approved. The City Manager is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Pledge Agreement in said form, with such additions thereto or changes therein as are recommended or approved by the City Manager upon consultation with bond counsel to the City, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Pledge Agreement.

Section 4. The form of Loan Agreement on file with the City Clerk is hereby approved. The City Manager is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Loan Agreement in said form, with such additions thereto or changes therein as are recommended or approved by the City Manager upon consultation with bond counsel to the City, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Loan Agreement.

Section 5. The form of Regulatory Agreement on file with the City Clerk is hereby approved. The City Manager is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Regulatory Agreement in said form, with such additions thereto or changes therein as are recommended or approved by such officers upon consultation with bond counsel to the City, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Regulatory Agreement.

Section 6. The Bonds, when executed, shall be delivered to Silicon Valley Bank, as the initial holder thereof, upon the funding of the initial advance of the Loan (as defined in the Pledge Agreement) with the purchase price for the initial draw of the Bonds.

Section 7. The law firm of Jones Hall, A Professional Law Corporation, is hereby named as bond counsel to the City in connection with the issuance of the Bonds. The financial advisory firm of CGS Advisors, Inc. is hereby named as financial advisor to the City in connection with the issuance of the Bonds. The fees and expenses of bond counsel and the financial advisor are to be paid solely from the proceeds of the Bonds or directly by the Borrower.

Section 8. All actions heretofore taken by the officers and agents of the City with respect to the sale and issuance of the Bonds are hereby approved, confirmed and ratified, and the proper officers of the City, including the City Manager, are hereby authorized and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Bonds in accordance with this Resolution and resolutions heretofore adopted by the City and in order to carry out the Program, including but not limited to those certificates, agreements, deeds of trust and other documents described

in the Pledge Agreement, the Loan Agreement, the Regulatory Agreement, and the other documents herein approved and any certificates, agreements or documents as may be necessary to further the purpose hereof, including, but not limited to, any subordination agreement required to be executed in connection with the proposed financing, but which shall not create any obligation or liability of the City other than with respect to the revenues and assets derived from the proceeds of the Bonds.

Section 9. This resolution shall take effect immediately upon its adoption.

IN COUNCIL, HAYWARD, CALIFORNIA, December 3, 2013.

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward