

Title 15

HAZARDOUS MATERIALS**

Chapters:

15.04	GENERAL PROVISIONS
15.08	DEFINITIONS
15.12	HAZARDOUS MATERIALS AND WASTES MANAGEMENT*
15.16	WOOD SMOKE NUISANCE

**Chapters 11.18 and 11.52 were severed from Title 11, repealed in 2004, and reenacted as Title 15, Chapters 15.04, 15.08 and 15.12.

Chapter 15.12 adopts Chapters 6.5, 6.67, 6.7, 6.75, 6.11 and 6.95 of Division 20 of the California Health and Safety Code, and Division 7, Chapter 10, Article 4 of the California Water Code with specified modifications and also elements of Article 79 and 80 of the Uniform Fire Code.

See also Chapter 11.50 for provisions of the Berkeley Hazardous Waste Importation Regulation Act.

Under Chapter 19.48 of the Berkeley Municipal Code, the Fire Department has permit requirements and other requirements for hazardous materials.

Chapter 15.04

GENERAL PROVISIONS

Sections:

- 15.04.010 Title for citation.**
- 15.04.020 Purpose of provisions.**
- 15.04.030 Rights under existing permits and registrations not affected.**
- 15.04.040 Continuation of existing law.**
- 15.04.050 References applicable to amendments and additions.**
- 15.04.060 Hazardous materials manager--Authority and duties.**
- 15.04.070 Alternate materials and methods--Approval required.**
- 15.04.080 Organization of title--Effect of headings.**
- 15.04.090 Severability.**
- 15.04.100 Liability of City and City employees.**

Note:

Chapters 11.18 and 11.52 were severed from Title 11, repealed in 2004, and reenacted as Title 15, Chapters 15.04, 15.08 and 15.12.

Chapter 15.12 adopts Chapters 6.5, 6.67, 6.7, 6.75, 6.11 and 6.95 of Division 20 of the California Health and Safety Code, and Division 7, Chapter 10, Article 4 of the California Water Code with specified modifications and also elements of Article 79 and 80 of the Uniform Fire Code.

See also Chapter 11.50 for provisions of the Berkeley Hazardous Waste Importation Regulation Act.

Under Chapter 19.48 of the Berkeley Municipal Code, the Fire Department has permit requirements and other requirements for hazardous materials.

Section 15.04.010 Title for citation.

This title may be cited as the "Berkeley Hazardous Materials Code." (Ord. 6824-NS § 3, 2004)

Section 15.04.020 Purpose of provisions.

It is the intent of this title to provide regulations and standards for certain operations, enterprises or activities which, if not regulated, may adversely affect the public health and safety. These regulations and standards are established to provide a healthful community living and working environment; to reduce the pollution of the air, land, and water; to prevent the spread of disease and related human discomfort caused by exposure to hazardous materials and wastes; to reduce the hazards of fire involving hazardous materials and wastes; and to prevent unsightliness which may result in the depreciation of property values and interfere with the enjoyment of life. It is further the intent to provide regulations and standards that equal or exceed all applicable state laws. It is declared that in an instance where the provisions of this title do not encompass all of the statutes or regulations, that such statutes and regulations are included and required for conformance as a part of this title. (Ord. 6824-NS § 3, 2004)

Section 15.04.030 Rights under existing permits and registrations not affected.

No rights given by any permit or registration under any ordinance repealed by this title are affected by the enactment of this title or by such repeal, but such rights shall be exercised according to this title after the effective date of the ordinance set forth herein. (Ord. 6824-NS § 3, 2004)

Section 15.04.040 Continuation of existing law.

The provisions of this title, insofar as they are substantially the same as existing provisions relating to the same subject matter, shall be construed as restatements and continuation thereof and not as new enactments. (Ord. 6824-NS § 3, 2004)

Section 15.04.050 References applicable to amendments and additions.

Whenever reference is made to any portion of this title or of any other law or regulation of the state, the reference applies to all amendments and additions now or hereafter made. (Ord. 6824-NS § 3, 2004)

Section 15.04.060 Hazardous materials manager--Authority and duties.

The hazardous materials manager, as defined in Section 15.08.070, shall administer and enforce the provisions of this title. Whenever, by this title, an authority is granted to or a duty is imposed upon the hazardous materials manager, the authority may be exercised or the duty performed by the hazardous materials manager, or by his or her designee. (Ord. 6824-NS § 3, 2004)

Section 15.04.070 Alternate materials and methods--Approval required.

A. The hazardous materials manager may approve the use of any material design, installation, device, arrangement or operation other than prescribed by this title if the hazardous materials manager finds that the proposed material, appliance, design, installation, device, arrangement or operation is equivalent to that prescribed in quality, strength, effectiveness, durability and safety for the protection of life and health. Any such finding shall be in writing and shall state the factual basis therefore.

B. The hazardous materials manager may require that sufficient evidence or proof be submitted to substantiate any claim regarding the use of such equivalent.

C. Whenever there is any evidence that material, appliance, installation, device or arrangement does not conform to the provisions of this title, or in order to substantiate claims for an equivalent, the hazardous materials manager may require tests by an approved agency as proof of compliance. These tests shall be made at the expense of the claimant. (Ord. 6824-NS § 3, 2004)

Section 15.04.080 Organization of title--Effect of headings.

This title is divided into chapters and sections. Chapter and section headings do not govern, limit, modify or in any way affect the scope, meaning or intent of the provisions of any chapter or section. (Ord. 6824-NS § 3, 2004)

Section 15.04.090 Severability.

If any provision of this title or any application thereof is held invalid, such invalidity shall not affect any other provision of this title, or the application of the same provision to another person or circumstance, except as may be provided by a court of competent jurisdiction, and to this end the provisions of this chapter are declared to be severable. (Ord. 6824-NS § 3, 2004)

Section 15.04.100 Liability of City and City employees.

This title shall not be construed as imposing upon the City any liability or responsibility for damages resulting from any defective construction or equipment or the installation thereof; nor shall the City nor any official or employee thereof be held as assuming any liability or responsibility by reason of any inspection authorized by this title, or any permit or registration issued pursuant to this title. Nothing in this title is intended to create a mandatory duty under Government Code Section 815.6. (Ord. 6824-NS § 3, 2004)

Chapter 15.08

DEFINITIONS

Sections:

15.08.010	Applicability of general definitions.
15.08.020	Approved.
15.08.030	Closure.
15.08.040	Handle.
15.08.050	Handler.
15.08.060	Hazardous material or waste.
15.08.070	Hazardous materials manager.
15.08.080	Operate.
15.08.090	Place.
15.08.100	Structure.

Note:

Chapters 11.18 and 11.52 were severed from Title 11, repealed in 2004, and reenacted as Title 15, Chapters 15.04, 15.08 and 15.12.

Chapter 15.12 adopts Chapters 6.5, 6.67, 6.7, 6.75, 6.11 and 6.95 of Division 20 of the California Health and Safety Code, and Division 7, Chapter 10, Article 4 of the California Water Code with specified modifications and also elements of Article 79 and 80 of the Uniform Fire Code.

See also Chapter 11.50 for provisions of the Berkeley Hazardous Waste Importation Regulation Act.

Under Chapter 19.48 of the Berkeley Municipal Code, the Fire Department has permit requirements and other requirements for hazardous materials.

Section 15.08.010 Applicability of general definitions.

The definitions set forth in this chapter shall apply to the provisions of this title. For purposes of this title and the chapters herein, terms shall have the meaning defined in Chapter 1.04 of the Berkeley Municipal Code. These definitions shall be superseded for purposes of any chapter or section within this title by definitions presented in laws and regulations incorporated by reference in that chapter or section, and by definitions adopted by that chapter or section. (Ord. 6824-NS § 3, 2004)

Section 15.08.020 Approved.

"Approved," when used in connection with any material, equipment, method, operation or type of construction except building construction, means:

- A. Meeting the requirements and approval of the hazardous materials manager based upon the results of investigations or tests conducted by a nationally recognized testing agency; or
- B. Based upon accepted principles and standards established by national authorities, technical, health or scientific organizations or agencies. (Ord. 6824-NS § 3, 2004)

Section 15.08.030 Closure.

"Closure" means closure of a storage unit or facility authorized under this title to handle hazardous materials or wastes, and includes submittal of a closure application and, if necessary, preparation and implementation of a closure plan, designed to meet all of the following objectives:

- A. Eliminate the need for further maintenance or monitoring of the closed unit or facility;
- B. Ensure that there is no residual threat to public health or safety or the environment from possible release of hazardous materials or wastes from the unit or facility; and

C. Ensure that the removal, disposal, neutralization or reuse of the hazardous materials or wastes that were handled in or released from the unit or facility is accomplished in an appropriate manner. (Ord. 6824-NS § 3, 2004)

Section 15.08.040 Handle.

"Handle" means to use, generate, process, produce, package, treat, store, emit, discharge, or dispose of a hazardous material or waste in any fashion. (Ord. 6824-NS § 3, 2004)

Section 15.08.050 Handler.

"Handler" means a business or other person that handles hazardous materials and/or wastes subject to the provisions of this title. (Ord. 6824-NS § 3, 2004)

Section 15.08.060 Hazardous material or waste.

"Hazardous material or waste" means any of the following:

A. Any material classified as a hazardous material or hazardous substance by any of the laws or regulations incorporated by reference by Section 15.12.020;

B. Any waste classified as a hazardous waste by any of the laws or regulations incorporated by reference by Section 15.12.020;

C. Any hazardous material or waste as defined in Chapter 19.48 of the Berkeley Municipal Code;

D. Any etiologic agent, except vaccines, which includes any viable microorganism, or its toxin, which causes or may cause disease in humans or animals. Etiologic agents include those agents listed in 42 CFR Section 72.3 or the regulations of the Department of Health and Human Services, and any other agent that causes or may cause severe, disabling or fatal disease.

E. Any other material or waste designated as hazardous for purposes of this title by the hazardous materials manager, upon a finding that the material or waste because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the community. (Ord. 6824-NS § 3, 2004)

Section 15.08.070 Hazardous materials manager.

"Hazardous materials manager" means the manager of the Certified Unified Program Agency (CUPA), or hazardous materials programs of the City or other equivalent position, or his or her designee. (Ord. 6824-NS § 3, 2004)

Section 15.08.080 Operate.

"Operate" includes "conduct" and "maintain" and any of its variants. (Ord. 6824-NS § 3, 2004)

Section 15.08.090 Place.

"Place" includes premises, land, place, building, structure, wharf, pier or dock. (Ord. 6824-NS § 3, 2004)

Section 15.08.100 Structure.

"Structure" is that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner and which requires location on the ground or attachment to something having location on the ground, as defined in Chapter 19.28 of the Berkeley Municipal Code. (Ord. 6824-NS § 3, 2004)

Chapter 15.12

HAZARDOUS MATERIALS AND WASTES MANAGEMENT*

Sections:

15.12.010	Findings and purpose.
15.12.020	Laws and regulations incorporated by reference.
15.12.030	Administration.
15.12.040	Filing of disclosure information.
15.12.050	Quantities requiring disclosure.
15.12.060	Applicability of California Accidental Release Program (CalARP).
15.12.070	Permits and registrations.
15.12.080	Reporting unauthorized releases.
15.12.090	Closure.
15.12.100	Remediation.
15.12.110	Community right to know; public records.
15.12.120	Fees and penalties.
15.12.130	Inspections.
15.12.140	Enforcement.
15.12.150	Administrative enforcement.
15.12.160	Relation to existing law; effective dates.
15.12.170	Relation to other laws.

***Prior ordinance history:** Ordinances 5662-NS, 5744-NS, 5948-NS, 6175-NS and 6271-NS.

Note:

Chapters 11.18 and 11.52 were severed from Title 11, repealed in 2004, and reenacted as Title 15, Chapters 15.04, 15.08 and 15.12.

Chapter 15.12 adopts Chapters 6.5, 6.67, 6.7, 6.75, 6.11 and 6.95 of Division 20 of the California Health and Safety Code, and Division 7, Chapter 10, Article 4 of the California Water Code with specified modifications and also elements of Article 79 and 80 of the Uniform Fire Code.

See also Chapter 11.50 for provisions of the Berkeley Hazardous Waste Importation Regulation Act.

Under Chapter 19.48 of the Berkeley Municipal Code, the Fire Department has permit requirements and other requirements for hazardous materials.

Section 15.12.010 Findings and purpose.

The City Council finds and declares:

A. Hazardous materials and wastes present in the community may pose acute and chronic health hazards to individuals who live, visit and work in the City of Berkeley and who are exposed to such substances as a result of fire, spills, industrial accidents, or other releases or emissions.

B. It is the intent of the Council to recognize the community's right and need for basic information on the use, handling, storage and disposal of hazardous materials and wastes in Berkeley and to establish an orderly system for the provision of such information.

C. It is further the intent of the Council that the system of disclosure set forth herein shall provide information essential to firefighters, health officials, planners, elected officials, workers and their representatives, businesses and residents in meeting their responsibilities for the health and welfare of the community in such a way that the statutory privileges against disclosure of non-public records are not abridged.

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

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

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

G. It is further the intent of the Council to conform the provisions of this chapter to California laws regulating the remediation of contamination resulting from releases of hazardous materials and wastes, including those provided by the laws identified in subsection F of this Section 15.12.010, as well as Chapter 6.8 of Division 20 of the California Health and Safety Code, and Division 7 of the California Water Code. In addition to the provisions set forth in Chapter 1.24 of the Berkeley Municipal Code, the City of Berkeley hereby assumes responsibility, to the extent authorized by law, for the abatement of nuisances and remediation of contamination resulting from releases of hazardous materials and waste. (Ord. 6824-NS § 3, 2004)

Section 15.12.020 Laws and regulations incorporated by reference.

The following provisions of state law, with their implementing regulations and agency resolutions, are hereby incorporated into this chapter by reference: California Health and Safety Code Division 20, Chapter 6.5 (hazardous waste), Chapter 6.67 (aboveground storage of petroleum), Chapters 6.7 and 6.75 (underground storage tanks), Chapter 6.8 (Carpenter-Presley Tanner Hazardous Substances Account Act), Chapter 6.11 (unified program), Chapter 6.95 Article 1 (hazardous materials) and Article 2 (accidental release prevention); and Division 7 of the California Water Code (water quality), and Department of Water Resources Bulletins No. 74-81 and 74-90 (water, cathodic protection and groundwater monitoring wells). This chapter contains additional stricter local requirements in accordance with Sections 25299.2 and 25500 of the California Health and Safety Code. This chapter also incorporates by reference provisions of the Uniform Fire and Building Codes which pertain to management, containment, security and separation of hazardous materials and wastes, as they may be adopted from time to time by the City of Berkeley. The provisions of this chapter shall conform to these incorporated provisions as they may be amended, unless explicitly modified within this chapter. (Ord. 6824-NS § 3, 2004)

Section 15.12.030 Administration.

This chapter shall be administered and enforced by the hazardous materials manager. The hazardous materials manager may, for purposes related to this chapter, undertake actions, including but not limited to, the maintenance and verification of files relating to this chapter, the acquisition of additional information on hazardous materials and wastes and their handling, public education regarding hazardous materials and wastes, and promotion of pollution prevention, recycling of wastes, and compliance with this chapter. (Ord. 6824-NS § 3, 2004)

Section 15.12.040 Filing of disclosure information.

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

material or waste that must be disclosed:

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

2. All information required to be submitted under the authority of Health and Safety Code Sections 25503, 25503.3, 25503.5, 25504, 25504.1, 25509 and 25509.3.

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

C. A handler shall file a revised UPCF, including additional information required under this chapter, at least once every three years or as specified by the hazardous materials manager. In addition, a handler shall file a revised UPCF within 30 days after any of the following:

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

2. Change of business address;

3. Change of business ownership; or

4. Change of business name.

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

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

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

G. A short form hazardous materials management plan may be required at the discretion of the hazardous materials manager or Fire Chief if the quantity of each hazardous material stored in one or more storage facilities in an aggregate quantity for the facility is 500 pounds or less for solids, 55 gallons or less for liquids, or 200 cubic feet or less at standard temperature and pressure for compressed gases. Such a plan shall include the following components:

1. General facility information;

2. A simple line drawing of the facility showing the location of the storage facilities and indicating the hazard class or classes and physical state of the hazardous materials and wastes being stored and whether any of the material is a waste;

3. Information describing that the hazardous materials and wastes will be stored and handled in a safe manner and will be appropriately contained, separated and monitored;

4. Assurance that security precautions have been taken, employees have been appropriately trained to handle the hazardous materials and wastes and react to emergency situations, adequate labeling and warning signs are posted, adequate emergency equipment is maintained, and the disposal of hazardous materials and wastes will be in an appropriate manner.

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

I. All facilities that manufacture or use manufactured nanoparticles shall submit a separate written disclosure of the current toxicology of the materials reported, to the extent known, and how the facility will safely handle, monitor, contain, dispose, track inventory, prevent releases and mitigate such materials. (Ord. 6960-NS § 1 (part), 2006; Ord. 6824-NS § 3, 2004)

Section 15.12.050 Quantities requiring disclosure.

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

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

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

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

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

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

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

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

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

7. All manufactured nanoparticles, defined as a particle with one axis less than 100 nanometers in length, shall be reported in the disclosure plan. (Ord. 6960-NS § 2 (part), 2006; Ord. 6824-NS § 3, 2004)

Section 15.12.060 Applicability of California Accidental Release Program (CalARP).

If the hazardous materials manager determines there to be a greater risk due to the nature of the material stored, the method of storage, location, operations, history of a facility, or other concern, the hazardous materials manager may require a facility to prepare a Risk Management Plan (RMP) and to be subject to Article 2 of Division 20 of the California Health and Safety Code even if quantities of regulated substances are less than state threshold quantities as defined in Section 25532(j) of Chapter 6.95 of Division 20 of the California Health and Safety Code. (Ord. 6824-NS § 3, 2004)

Section 15.12.070 Permits and registrations.

A. No person shall handle any quantity of hazardous material or waste subject to disclosure under Section 15.12.050, without obtaining all necessary permits and registrations from the hazardous materials manager. All applications for permits or registrations required by this title shall be upon forms furnished by the

hazardous materials manager. Each application shall provide the owner's and/or operator's name and address, the designated place, purpose or object to which the permit or registration shall apply, and such additional information as the hazardous materials manager may consider necessary to determine compliance with this title. All applications for registrations and permits shall contain at least the disclosure information required by Section 15.12.040, and shall be accompanied by all plans or specifications required by this title. Applicants for additional registrations or permits shall provide the following additional information:

1. If underground storage tanks are on the place of business, the Unified Program Consolidated Forms concerning underground storage tanks shall be completed and submitted;

2. If hazardous wastes generated on-site are being treated on-site and the treatment is subject to the permit-by-rule, conditionally authorized or conditionally exempt tier, the Unified Program Consolidated Forms concerning on-site hazardous waste treatment shall be completed and submitted; and

3. Other information as required by the hazardous materials manager.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Review of the hearing decision shall be subject to judicial review pursuant Chapter 2.96 of the Berkeley Municipal Code and California Code of Civil Procedure Sections 1094.5 and 1094.6. (Ord. 6824-NS § 3, 2004)

Section 15.12.080 Reporting unauthorized releases.

The handler or any employee, authorized representative, agent or designee shall, upon discovery, immediately report to the hazardous materials manager any actual or threatened unauthorized release of a hazardous material or waste. Releases required to be reported under this section shall include, but need not be limited to, all unauthorized releases that the handler is required to report to any agency under any other law governing the handling of hazardous materials or wastes. The requirement of this section is in addition to any other requirements to report releases, and compliance with this section does not constitute compliance with any other requirements to report releases to any other agency. (Ord. 6824-NS § 3, 2004)

Section 15.12.090 Closure.

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

B. Closure requires the following steps:

1. A handler shall submit a closure application to the hazardous materials manager at least 45 days prior to abandonment or closure of the regulated unit or facility. The closure application shall demonstrate to the satisfaction of the hazardous materials manager that all hazardous materials and wastes which are or have been handled or released in the regulated area will be transported, disposed of or reused in a manner protective of public health and safety and the environment, and that any residual contamination will be removed before closure is complete.

2. The hazardous materials manager shall notify the applicant that the closure application is complete and has been accepted, notify the applicant of any deficiencies in the closure application that must be corrected prior to closure, or, depending on the complexity of the closure, require a more detailed closure plan.

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

4. If contamination associated with the regulated area cannot be removed prior to closure, then the closure plan shall include a definite plan for assessing, monitoring, and removing any such contamination.

The hazardous materials manager may accept a plan under this subsection only upon a finding that the plan provides adequate protection to public health and safety and the environment. (Ord. 6824-NS § 3, 2004)

Section 15.12.100 Remediation.

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

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

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

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

1. The notice to abate may require the handler to cease and desist any manufacturing or hazardous material handling activities that cause or contribute to the nuisance or imminent health threat.

2. The notice may specify the corrective action required or require the owner or handler to prepare a Plan of Corrective Action. When the exact nature and extent of contamination cannot be determined based on information available at the time the notice is served, the notice may require the owner and the handler to propose measures in a Plan of Corrective Action to more fully characterize the contamination, present the results of such characterization, and plan for corrective action within the time specified in the notice.

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

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

1. The owner or past owners of the property;

2. The person or persons whose negligent or willful act or omission proximately caused such release, discharge or deposit;

3. The person or persons who owned or had custody or control of the hazardous substance or material at the time of such release, discharge, or deposit, without regard to fault or proximate cause; and

4. The person or persons who owned or had custody or control of the container which held such hazardous material or substance at the time of or immediately prior to such release, discharge or deposit, without regard to fault or proximate cause.

G. See Section 15.12.070 for all permitting requirements. (Ord. 6824-NS § 3, 2004)

Section 15.12.110 Community right to know; public records.

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

1. Written application for disclosure of information shall be submitted to the hazardous materials manager, on a form provided by the City. The written application shall identify the address of the business or City facility for which information is sought. The written application shall also include the applicant's name,

address, telephone number, and verification of the applicant's identity.

2. The information requested shall be provided within ten working days after the submission of a complete application, except that requests for information that is exempt from disclosure under provisions of the Public Records Act (commencing with Section 6250 of the Government Code) or other law or regulation, or has been designated as trade secret or confidential business information by the handler shall be subject to the subsections of this section regarding such records. As used in this chapter, trade secret shall have the meaning given by Sections 25290 and 25511 of the Health and Safety Code, Section 6254.7 of the Government Code, and Section 1060 of the Evidence Code.

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

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

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

1. Any officer or employee of the City of Berkeley, County of Alameda, State of California, or United States of America, in connection with the official duties of such officer or employee under any law for the protection of health. For the purposes of this section, fire and emergency response personnel and health personnel operating within the jurisdiction of the City, and any contractor who is furnished information that is protected from disclosure by this section, shall be considered employees of the City; or

2. To any physician or registered nurse who has determined that such information is necessary to the medical treatment of his or her patient.

3. Any person who received information protected from disclosure by this section because he or she qualifies under subdivisions 1 or 2 of this subsection and who, knowing that disclosure of this information is prohibited, knowingly and willfully discloses the information in any manner to any person not entitled to receive it, shall be guilty of a misdemeanor.

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

F. The provisions of this section shall not permit a handler of hazardous materials to refuse to disclose to the hazardous materials manager information required by this chapter. (Ord. 6824-NS § 3, 2004)

Section 15.12.120 Fees and penalties.

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

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

1. If such fee or penalty is not paid when due, such fee or penalty shall constitute an assessment against such business property and shall be a lien on the property for the amount thereof, which may be

imposed and enforced as set forth in Chapter 1.24 of the Berkeley Municipal Code.

C. In addition, the City may collect fees in any other manner permitted by law. (Ord. 6824-NS § 3, 2004)

Section 15.12.130 Inspections.

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

B. All inspections under this chapter shall be at the discretion of the City and nothing in this chapter shall be construed as requiring the City to conduct any such inspection nor shall any actual inspection made imply a duty to conduct any other inspection. Furthermore, nothing in this chapter shall be construed to hold the City or any officer, employee or representative of the City responsible for any damage to persons or property by reason of making an inadequate or negligent inspection or by reason of any failure to make an inspection or reinspection. (Ord. 6824-NS § 3, 2004)

Section 15.12.140 Enforcement.

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

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

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

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

E. Remedies under this chapter are cumulative.

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

G. The following costs shall be recoverable:

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

H. In any civil action filed pursuant to this chapter, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs; provided, that, pursuant to Government Code Section 38773.5, attorneys' fees shall only be available in an action or proceeding in which the City has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding. (Ord. 7175-NS § 1, 2011; Ord. 6824-NS § 3, 2004)

Section 15.12.150 Administrative enforcement.

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

B. The City Council finds and declares:

1. Administrative hearings pursuant to this title will often involve existing or potential threats to public health, safety and welfare, as well as to the environment, thus implicating matters of great public interest. The public at large has a significant stake in being able to observe and participate in such hearings, without undue procedural constraints.

2. The public, the City and the parties to proceedings under this title have a significant interest in their speedy and economical resolution; and the City and public have an additional vital interest in prompt compliance and remediation, when appropriate.

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

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

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

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

E. For purposes of Government Code Section 11440.10, the agency head as defined in Government Code Section 11405.40 shall be the City Manager or his or her designee; provided that the City Manager may not designate a person subject to the authority, direction, or discretion of the hazardous materials manager. (Ord. 6824-NS § 3, 2004)

Section 15.12.160 Relation to existing law; effective dates.

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

B. The City of Berkeley, under the terms of Section 25502 of the Health and Safety Code, hereby assumes and reaffirms responsibility and exclusive jurisdiction within the City, including contiguous areas within the City of Oakland for which Berkeley has received regulatory and enforcement authority, for implementation of Chapter 6.95 of Division 20 of the Health and Safety Code (commencing with Section 25500), regulating the inventory and preparation of hazardous materials business plans, and regulating risk management planning to prevent accidental releases of regulated substances. This section is declarative of the assumption and responsibilities formerly codified in Chapter 11.52 of the Berkeley Municipal Code.

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

D. The City of Berkeley, under the terms of Health and Safety Code Section 25404.3 and the certification of the City by the California Environmental Protection Agency on March 1, 1997, hereby assumes

and reaffirms responsibility and exclusive jurisdiction within the City, including contiguous areas within the City of Oakland for which Berkeley has received regulatory and enforcement authority, for implementation of Health and Safety Code Sections 25404 et seq., providing for unified programs to regulate hazardous materials and wastes. (Ord. 6824-NS § 3, 2004)

Section 15.12.170 Relation to other laws.

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

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

C. The degree of protection required by this chapter is considered reasonable for regulatory purposes. The standards set forth herein are minimal standards and this chapter does not imply that compliance will ensure that there will be no improper release of hazardous materials or wastes. This chapter shall not create liability on the part of the City, any officer or employee thereof for any damages that result from reliance on this chapter or any administrative decision lawfully made hereunder. All persons handling hazardous materials or wastes within the City are advised to determine to their own satisfaction the level of additional protection necessary or desirable to ensure that there is no improper release of hazardous materials or wastes.

D. Subject to the limitations of due process, and notwithstanding any other provisions of this code, whenever the words "shall" are used in establishing a responsibility or duty of the City, its elected or appointed officers, employees, or agents, it is the intent of the City Council that such words establish a discretionary responsibility or duty requiring the exercise of judgment and discretion. (Ord. 6824-NS § 3, 2004)

Chapter 15.16

WOOD SMOKE NUISANCE

Sections:

15.16.010	Findings and Purpose.
15.16.020	Definitions.
15.16.030	Procedures.
15.16.040	Remedies.
15.16.050	Enforcement.

Section 15.16.010 Findings and purpose.

A. The City of Berkeley recognizes that while fireplaces and wood burning appliances are a desirable amenity, wood smoke consists of fine particles, which are regarded as a health hazard by both national and state health professionals. Air Quality Standards have been created identifying appropriately healthy maximum standards of particulates in the air. The operation of wood burning appliances therefore needs to be controlled so as not to cause significant health risks to residents who live near them.

B. The Environmental Protection Agency sets a limit of 7.5 grams of particulate emissions per hour, or equivalent, as a compliance level for wood burning appliances. Non-compliant wood burning appliances create local conditions that may significantly exceed particulate air quality standards and adversely affect nearby residents.

C. It is impracticable for a member of the public to demonstrate by measurements that intermittent operation of a wood-burning appliance has resulted in particulate concentrations that exceed air quality standards or create a health hazard. It is also impracticable for most individuals to simulate their local conditions in a computer model to determine whether operation of a wood-burning appliance will create or has created a health hazard.

D. Residents affected by wood smoke currently have no feasible recourse to limit or stop their exposure and potential health impacts.

E. It is necessary to provide citizens recourse when they are being unwillingly exposed to wood smoke and may be suffering health impacts.

F. Accordingly, this chapter defines the circumstances under which operation of a wood-burning appliances is likely to create a health hazard, declares such operation a nuisance, and provides a process that encourages resolution of disputes about such nuisances through informal meetings and mediation, before they may be taken to court. (Ord. 7063-NS § 1, 10/07/08)

Section 15.16.020 Definitions.

For the purposes of this chapter, the following definitions apply:

A. "Wood burning appliance" means any indoor fireplace, fireplace insert, or woodstove that burns wood or a wood product, but does not include a wood burning appliance used for cooking in a commercial food service establishment.

B. "Non-compliant" means any wood-burning appliance that does not meet EPA emission standards of 7.5 grams of particulate matter per hour as defined by the US Environmental Protection Agency in 40 CFR Ch. 1 (7-1-02 Edition) §60.532

(<http://www.epa.gov/Compliance/resources/policies/monitoring/caa/woodstoverule.pdf>).

C. "Complaining party" means any person who wishes to limit another person's use of a wood-burning appliance.

D. "Wood burning appliance operator" means any individual, corporation or other entity operating a wood-burning appliance.

E. "Immediate neighbor" means a resident of a building on a parcel that abuts or confronts a property

with a wood burning appliance or a building that has a direct line of sight from the highest residential floor to the source of the smoke, and who resides within 120 feet of a source of wood smoke. However a person is not an immediate neighbor if there is an impermeable surface, such as a wall or structure, which blocks the line of sight between the source of smoke and the top of the highest residential floor of the building in which resident lives.

F. "Smoke health hazard" means operation of a non-compliant wood-burning appliance or operation of a compliant wood-burning appliance in a manner not consistent with the manufacture's instructions, including burning improper fuel.

G. "Particulate Matter (PM)" means very small particles consisting mostly of carbon. PM may be divided into many size fractions, measured in microns (one-millionth of a meter). California Air Resources Board (CARB) regulates two size classes of particles - particles up to 10 microns (PM10) and particles up to 2.5 microns in size (PM2.5). PM2.5 particles are a subset of PM10.

H. Improper fuel includes, but is not limited to, garbage, treated wood, non-seasoned wood, used or contaminated wood pallets, plastic products, rubber products, waste petroleum products, paints and paint solvents, coal, animal carcasses, glossy and/or colored paper, salt water driftwood, particle board, and any material not intended by a manufacturer for use as a fuel in a wood-burning device. Improper fuel may be evidenced by smoke or odor. (Ord. 7063-NS § 1, 10/07/08)

Section 15.16.030 Procedures.

The following procedures shall be followed in the resolution of disputes about smoke health hazards under this chapter.

A. Initial reconciliation: A person who believes that the operation of a wood burning appliance has created a smoke health hazard shall notify the wood burning appliance operator in writing, within 30 days of an occurrence of an alleged smoke health hazard. The letter of notification must include a description of the problem and a reference to this chapter. The notification should, if possible, be preceded by personal discussions to enable the complaining party and wood burning appliance operator to attempt to reach a mutually agreeable solution. Potential solutions may include: changing the frequency, duration, or timing of wood burning; using the wood burning appliance during certain weather conditions; or operating the wood burning appliance only when the complaining party is not at home.

B. Mediation: If an initial reconciliation attempt under subdivision (A) fails, the complaining party shall propose mediation, again in writing. The wood burning appliance operator may accept this proposal within 30 days. If the operator does not do so, the complaining party may file an action in Superior Court pursuant to subdivision (C) below. If mediation is elected, the parties shall mutually agree upon a mediator and split the costs thereof. If either party does not accept any City-subsidized mediation services that may be available, that party shall pay any additional costs for an alternate mutually agreeable mediator.

C. Binding arbitration: In those cases where the initial reconciliation process fails and where mediation has not resolved the dispute, the complaining party must offer to submit the dispute to binding arbitration and the operator may elect binding arbitration. The identity of the arbitrator shall be agreed upon by both the complaining party and the operator, who shall indicate such agreement in writing. The arbitrator shall follow the provisions of this chapter to reach a fair resolution of the complaint and shall submit a complete written report to the complaining party and the operator. This report shall include the arbitrator's findings with respect to all standards listed in Section 15.16.040 and a list of all mandated remedial actions, with any appropriate conditions concerning such actions including a schedule by which mandates must be completed.

D. Litigation: In those cases where initial reconciliation and mediation fail, and binding arbitration is not elected, the complaining party may file an action in a court of competent jurisdiction for resolution of the smoke health hazard claim under the provisions of this chapter. The litigant must state in the lawsuit that arbitration was offered and not accepted. (Ord. 7063-NS § 1, 10/07/08)

Section 15.16.040 Remedies.

A. The mediator shall recommend or the arbitrator or court shall order such remedial action as may be necessary to prevent further smoke health hazards.

B. Remedial actions may not require, but may allow as an option, physical changes to the operator's wood-burning appliance, chimney or property. (Ord. 7063-NS § 1, 10/07/08)

Section 15.16.050 Enforcement.

A smoke health hazard under this chapter is not a misdemeanor or infraction, and the enforcement of this chapter shall be by private parties only. The complaining party shall have the right to bring injunctive action to enforce any restorative action ordered pursuant to this chapter. (Ord. 7063-NS § 1, 10/07/08)

