



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow

SUBJECT: SEE BELOW

DATE: June 2, 2021

Approved

Kerrie Romanow

Date

06/03/21

**SUBJECT: AMENDMENTS TO SAN JOSE MUNICIPAL CODE CHAPTER 15.14
(SEWER USE REGULATIONS) AND ADMINISTRATIVE CITATION
SCHEDULE OF FINES**

RECOMMENDATION

- (a) Approve an Ordinance amending various Sections of Chapter 15.14 of Title 15 of the San José Municipal Code, Sewer Use Regulations to incorporate findings from a 2019 Pretreatment Compliance Audit and make other technical and conforming changes to the sewer use regulations, and
- (b) Adopt a Resolution amending the Administrative Citation Schedule of Fines for violations of Chapter 15.14 Sewer Use Regulations to and update the City's Schedule of Fines.

OUTCOME

Approval of the recommended revisions to San José Municipal Code (SJMC), Chapter 15.14, Sewer Use Regulations (commonly referred to as the Sewer Use Ordinance [SUO]) and Administrative Citation Schedule of Fines will improve the City's ability to effectively regulate industrial dischargers, clarify requirements for permitted industrial users, and increase the incentive for industries and businesses to comply with the SUO.

BACKGROUND

The 1972 Federal Clean Water Act establishes water quality standards for water bodies such as streams, rivers, bays, and oceans. This law requires the City to operate both its sanitary and storm sewers systems under separate National Pollution Discharge Elimination System (NPDES) permits. Wastewater treatment facilities are designed primarily to treat domestic waste with traditional pollutants such as organic material, oil and grease, and pH. Industrial pollutants such

as heavy metals and other chemicals such as solvents or organic compounds are difficult and expensive to treat at the San José-Santa Clara Regional Wastewater Facility (RWF). Requiring regulated industries to treat their wastes before discharging to the RWF protects the health and safety of City staff, ensures the integrity of the sanitary sewer system and RWF processes, and safeguards the health of the San Francisco Bay. The City of San José's Pretreatment Program is required by Federal regulation and is designed to monitor and to regulate industrial discharges to protect the sanitary sewer system, the RWF, and the San Francisco Bay.

As a regional regulatory authority, the Pretreatment Program enforces the SUO across the RWF's 300-square mile service area. This area includes the City of San José, City of Santa Clara, and City of Milpitas, the Cupertino Sanitary District, County Sanitation Districts 2-3, and the West Valley Sanitation District (serving the cities of Campbell, Los Gatos, Saratoga, and Monte Sereno) (collectively known as contributing jurisdictions). The City codifies this regulation in SJMC Chapters 9.08 and 15.14. Other jurisdictions that utilize the RWF similarly codify these requirements in their own ordinances to ensure the protection of the sewage collection system, RWF operations and personnel, and the San Francisco Bay, the ultimate receiving waters for the RWF. These ordinances provide general and specific prohibitions and requirements as they relate to non-domestic dischargers to the RWF. The SUO contains specific discharge concentration limits for industrial pollutants and outlines requirements and other programmatic provisions. The enforcement of the SUO is directed by an Enforcement Response Plan, a Federally mandated, State-approved set of enforcement guidelines and program procedures to ensure consistency and escalation in the enforcement of municipal and operations codes across the jurisdictions contributing to the RWF.

ANALYSIS

The proposed Ordinance adopts the recommendations of the Regional Water Quality Control Board (Regional Water Board) and updates the schedule of fines to increase compliance with sewer use regulations.

2019 EPA Pretreatment Compliance Audit Requirements and Recommendations

In April 2019, the Regional Water Board and the Environmental Protection Agency's (EPA) contractor, PG Environmental, conducted a Pretreatment Compliance Audit of the SUO and City of San José's Pretreatment Program. The audit was generally favorable and recommended technical changes to the SUO to clarify language and better align with federal regulations. The proposed Ordinance changes resulting from the Audit include:

- Adding the definitions of 'Duly Authorized Representative of the User', 'Indirect Discharge', and 'Publicly Owned Treatment Works'.
- Clarifying transfers of Industrial Wastewater Discharge Permits to incorporate federally-required components as described in 40 CFR 403.8(f)(1)(B)(2).

- Clarifying requirements on Baseline Monitoring Reports to incorporate report timeframes and to establish the authority to require submittal of baseline monitoring reports within the timeframe described in 40 CFR 403.12(b).
- Clarifying deadlines for industrial discharger compliance with categorical pretreatment standards as outlined in 40 CFR 403.12(d).
- Incorporating data accuracy certifications and authorized signatory statements pursuant to 40 CFR 403.6(a)(2)(ii).
- Clarifying the City's authority to immediately halt an actual or threatened discharge by an industrial user pursuant to 40 CFR 403.8(f)(1)(vi)(B).
- Clarifying the City's authority to enforce its Enforcement Response Plan pursuant to 40 CFR 403.8(f)(1)(vi) and 403.8(f)(5).
- Revising the definition of "Pretreatment Standard" to include reference to the prohibited discharge limits established under 40 CFR 403.5 that are included in the federal definition of "National Pretreatment Standard, Pretreatment Standard, or Standard" at 40 CFR 403.3(l).
- Clarifying conditions for Compliance Schedules as described in 40 CFR 403.12(c)(1)-(3).
- Revising provisions for the submission of Self-Monitoring Reports as outlined in 40 CFR 403.12(e) & (h).
- Revising sample collection procedures pursuant to 40 CFR 403.12(g)(3) & (4).
- Clarifying the City's authority to conduct inspections, surveillance activities, and other actions to assess compliance pursuant to 40 CFR 403.8(f)(1)(v).
- Clarifying maximum effluent limitations for toxic substances.

Staff Recommended Updates

Staff further recommends additional updates to the SUO to align with the EPA Model Ordinance. The additions include language from EPA's Dental Office Point Source Category and clarifications to existing codes. These proposed Ordinance changes include the following:

- Clarifying requirements for the implementation of Best Management Practices to prevent the release of pollutants to the storm and sanitary sewer systems.
- Clarifying the definition of 'Significant Change' to incorporate specific time periods.
- Clarifying resampling requirements for Industrial Users in response to violations.
- Clarifying and incorporating federal requirements for dental office dischargers.
- Clarifying violations and civil penalties.
- Incorporating charging language and updated fines to better enforce violations of Permit Conditions.

On February 25, 2021, the City submitted the proposed draft SUO revisions to the Regional Water Board for review. Following the 45-day review period, the Regional Water Board did not provide any comment to the City, and therefore, the City can adopt the proposed amendments.

Administrative Citation Schedule of Fees Updates

In addition to the update to the Ordinance, staff identified a need to modify existing fines, add new fines, and clarify titles in the Administrative Citation Schedule of Fines to better implement and enforce the Pretreatment Program. The following revisions are included in the attached Resolution:

WSP Program Area	Code Section(s)	Proposed Change	Reason For Change
Pretreatment	15.14.565 D	Adding a \$250 fine for failure to resample with 30 days following an exceedance of the oil & grease discharge limit	Changes will provide incentive for permitted industries to submit sampling results on time and improve compliance with permit requirements
Pretreatment	15.14.575 B	Adding a \$250 fine for failure to resample with 30 days following an exceedance of the pH discharge limits	Changes will provide incentive for permitted industries to submit sampling results on time and improve compliance with permit requirements
Pretreatment	15.14.585 D	Adding a \$250 fine for failure to resample with 30 days following an exceedance of established local discharge limits	Changes will provide incentive for permitted industries to submit sampling results on time and improve compliance with permit requirements
Pretreatment	15.14.675	Adding a \$250 fine for failure to maintain records onsite per permit requirements	Changes will provide incentive for permitted industries to maintain records onsite per permit requirements
Pretreatment	15.14.695	Adding a \$500 fine for failure to submit timely and complete discharge reports	Changes will provide incentive for permitted industries to submit discharge reports permit requirements
Pretreatment	15.14.725	Restructuring and adding \$250 to \$1,050 fines for various discharger classifications for failure to obtain a discharge permit prior to discharge to the City's collection system	Restructuring of fines will provide a better deterrent against violations by applying higher fines that equal or exceed the various permit application fees

Pretreatment	15.14.765	Adding a \$500 fine for failure to comply with the terms and conditions of a discharge permit	Changes will provide incentive for permitted industries to comply with the conditions of their discharge permit and the Sewer Use Ordinance
Pretreatment	15.14.770	Adding a \$300 fine for failure to implement and comply with permit-required Best Management Practices	Changes will provide incentive for permitted industries to comply with permit-required Best Management Practices to manage discharges

CONCLUSION

The SUO is a critical tool to ensure the regional protection of the RWF, the collection system, City personnel, and the environment. Approval of these proposed changes will allow the City to efficiently implement the Pretreatment Program throughout the RWF’s service area.

EVALUATION AND FOLLOW-UP

Once the City approves the proposed Ordinance, staff will ensure other jurisdictions served by the RWF adopt similar changes. This regional SUO approach ensures consistency across the RWF’s service area and centralizes the regulatory authority with the City of San José, the established “Control Authority” as outlined in the RWF’s NPDES Permit.

CLIMATE SMART SAN JOSE

The recommendation in this memo furthers Climate Smart San Jose’s clean water goals.

PUBLIC OUTREACH

This memorandum will be posted on the City’s Council Agenda website for the June 15, 2021 Council Meeting.

HONORABLE MAYOR AND CITY COUNCIL

June 2, 2021

Subject: Amendments to San Jose Municipal Code Chapter 15.14 (Sewer Use Regulations) and Administrative Citation Schedule of Fines

Page 6

COORDINATION

This report has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

The proposed Sewer Use Ordinance was presented to and approved by the Transportation & Environment Committee on April 5, 2021. It was presented to the Treatment Plant Advisory Committee on April 8, 2021, approval was recommended.

COST SUMMARY/IMPLICATIONS

There are no cost implications to the City as a result of these actions. Although some increases in fine amounts are proposed, most of the proposed changes to the Administrative Citation Schedule of Fines will enable staff to more effectively administer program requirements by making requirements more explicit and enforceable. The anticipated fiscal impact from these actions is assumed to be minimal.

CEQA

Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment

/s/

Kerrie Romanow

Director, Environmental Services Department

For questions, please contact Rajani Nair, Deputy Director, at rajani.nair@sanjoseca.gov or (408) 799-7462.