

Chapter 21.60: Hazards

21.60.050 DESTRUCTION OF RESTRICTED USES

Structures occupied by such uses may be rebuilt if destroyed, provided replacement construction complies with the development and design standards of MMC chapter 18.38, application for development approval is filed within six (6) months and construction commences not more than one (1) year after destruction of the original structure.

21.60.100 USES INVOLVING HAZARDOUS MATERIALS

1. Any use, project or establishment that includes or proposed to include or allow any of the following:
 - A. "Type H Occupancy" as defined and regulated by the State Structural Specialty Code with Oregon Amendments.
 - B. Outside storage of flammable, combustible, explosive or regulated materials as governed by the Uniform Fire Code or the Fire Code Ordinance of the Molalla Fire Department.
 - C. Use or release of biological agents requiring bio-safety containment precautions as determined by the National Institutes of Health or the U.S. Center for Disease control.
 - D. Use or release of an "extremely hazardous substance," or a "hazardous chemical," or a "toxic chemical" in quantities requiring reporting under, and as such terms are defined in, the Emergency Planning and Community Right-to-Know Act of 1986 (Title III of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C.A. Sec 55.11001 to 55.11050) and its associated Federal and Oregon State regulations.
 - E. Use or release of any materials classified as regulated materials under administrative rules adopted under this subsection.
2. Any use, project or establishment is exempt and shall not require a Hazardous Materials Permit if the applicant's use of regulated materials:
3. If a use, project or establishment is not exempt under the provisions of paragraph (B), above, a Hazardous Materials Permit shall be issued only upon demonstration that all of the following criteria, are met:
 - A. The use, project or establishment proposes to use regulated materials in such quantities, combinations, and under such manner of use, conditions and precautions that a leak, explosion, fire or accident at the building or site containing or proposed to contain the regulated material(s) is unlikely to:
 - 1) Release such regulated materials at levels greater than 1/2 the recognized level deemed to be "Immediately Dangerous to Life and Health" (IDLH) as defined and determined by the Structural Specialty Code and/or the Uniform Fire Code for the material, substance or agent in question.
 - 2) Release such regulated materials at levels the National Institutes of Health and/or the U.S. Center for Disease Control have determined to be hazardous to the life or health of those coming into contact with the material, substance or agent.

4. An application for any Building or Engineering Permit shall not be deemed complete unless the application submittal includes one (1) of the completed documents listed below. Any application for a land use action or permit shall either include one (1) of the completed documents or the applicant shall simultaneously apply for an exemption or Hazardous Materials Permit along with, but separate from, the land use application.
 - A. A signed and binding affidavit by the applicant stating the proposed use, project or establishment is exempt from the Hazardous Materials Permit process by virtue of the fact that the proposed use, project or establishment shall not contain any regulated materials.
 - B. An Exemption Certificate.
 - C. A Hazardous Materials Permit.
5. Requirements for establishing the Hazardous Materials Permit Process. The application for Hazardous Materials Screening shall provide the following information:
 - A. An inventory of regulated materials to be used on the applicant's premises.
 - B. An estimate of the maximum quantity of such regulated materials to be used on the premises at any given time.
 - C. A statement of how and in what manner the regulated materials are to be used.
 - D. A statement describing the specific methods and technology to be employed to ensure the safe use and containment of the regulated materials.
6. Upon receipt of the application for Hazardous Materials Screening, together with the required fee, the Planning Director, or designee, shall review the application for completeness and compliance with subsection (1.B.(2)) above, and shall advise the applicant regarding submittal of any additional materials necessary to comply. If the Planning Director determines that additional material must be submitted, the applicant may submit such material within 180 days of receipt of the original application. If the Planning Director, or designee, determines the submittal to be complete, the Planning Director, or designee, shall review the Hazardous Materials Screening submittal and issue a determination within ten (10) business days.
7. If a Hazardous Materials Containment and Mitigation Review are required, the applicant shall file an application for a review and pay a deposit sufficient to offset the actual cost including any consultant's report(s) ordered by the Review Body. The amount of the deposit shall be based on a schedule that takes into account the size, scope and nature of the project, as well as the number, type and amount(s) of regulated materials in question. The City shall keep an accurate record of the direct, indirect and overhead costs of the Hazardous Materials Containment and Mitigation Review. Any unexpended portion of the deposit shall be refunded to the applicant. Any additional cost in excess of the deposit shall be due to the City upon completion of the Committee's final report and paid before its release. Upon receipt of the application for Hazardous Materials Containment and Mitigation Review, together with the required fee, the Review Body shall review the application for completeness and compliance with subsection (1.B.(2)) above, and shall advise the applicant regarding submittal of any additional materials necessary to comply with subsection (1.A.(7)). If the Committee determines that additional material must be submitted, the applicant may submit such material within 180 days of receipt of the original application.

8. Except as otherwise herein provided, the application for a Hazardous Materials Permit shall be reviewed and a decision rendered by the Review Body. The Review Committee shall be comprised of the following individuals or their designees:
 - A. The Fire Marshall
 - B. The Public Works Director
 - C. The Planning Director
 - D. The Building Code Official
9. The Hazardous Material Containment and Mitigation Review shall determine if the proposed use, project or establishment, meets or can be modified or mitigated to meet, the criteria set forth.
10. At the direction of the committee, the applicant shall supplement the information required for the Hazardous Materials Screening process by providing:
 - A. Any applicable statement, standards or specifications describing the industry standards for the safe use and containment of the regulated material in question. Industry standards as used here include applicable governmental regulations as well as standards developed by industry trade, technical and scientific societies, associations, groups and institutes.
 - B. A statement from the applicant demonstrating how the applicant's specific methods and technology to be employed for the safe use and containment of the regulated materials fits with or deviates from the industry standards.
 - C. Additional technical, engineering and/or scientific information necessary to the Committee's decision.
 - D. If the proposed project has already entered the design phase or if it is a replication of an existing development using the same or substantially similar technology, the Committee may request detailed drawings and specifications that show proposed plans and measures designed to ensure that the proposed use, project or establishment will achieve the criteria and meet all pertinent aspects of the Structural Specialty Code, the Uniform Fire Code, and any other pertinent City Ordinance related to the permitting, siting and/or regulation of such uses, projects or establishments. An application may be denied if the committee finds that the information, data, plans or drawings required in the decision-making process are inadequate, incomplete or have not been provided in a timely fashion.
11. The Hazardous Materials Containment and Mitigation Review process shall include a specific notice to potentially affected property owners within an appropriate distance of the applicant's site to achieve the intent of the Community Right-to-Know Act and any applicable State law or administrative rule. Alternatively, if allowed by state law or administrative rule, the notice may be published in the Newspaper of general circulation in the area at least fourteen (14) days prior to the hearing.
 - A. Notification shall be as follows:
 - 1) At a minimum 500 feet from the subject property(s).
 - 2) At the Planning Director's discretion a larger notice area may be required.
 - 3) In the most severe cases, all residents of the City as well as County agencies (to determine if further county notice is required) shall receive notice.

12. A public hearing on the Hazardous Materials Containment and Mitigation application shall be held within thirty (30) days after the information is required as set forth in this code. A public hearing notice shall be sent no less than fourteen (14) days prior to the public hearing. The hearing shall be open to the public and shall be conducted on the record of material and testimony submitted by the applicant, any consultant's report requested by the Review Committee, and any other testimony received at the hearing. At the discretion of the Review Committee, the hearing may be continued, but in no case may the hearing be continued beyond fifty (50) days after the initial filing has been deemed complete unless the applicant voluntarily waives state statutory rights to a final decision within a particular period of time. A decision shall be rendered by the Review Committee not more than ten (10) business days after the last evidentiary session.
13. Pursuant to the Hazardous Materials Containment and Mitigation Review, the Review Committee may find that the use, project or establishment includes or proposes to include use of regulated materials, that.
 - A. Are in fact, below the established minimum thresholds of concern and require no other regulatory action.
 - B. Are deemed too dangerous, either alone or in combination with other materials either proposed for use by the applicant or preexisting in the proximate area, to allow the proposed use in a densely populated area, such as the TTCPA, thereby requiring denial of a Hazardous Materials Permit.
 - C. Are above the established minimum threshold or in combination so as to be of concern, and are proposed for use in such manner that the best available technology and/or mitigation measures for that particular application have not been clearly demonstrated to be capable of meeting the criteria for approval, thereby requiring denial of a Hazardous Materials Permit.
 - D. Are above the established minimum threshold or contained in combination so as to be of concern, but may be granted a Hazardous Materials Permit subject to certain conditions. Such conditions of approval may include, but are not limited to:
 - 1) Restrictions on the quantity of regulated materials allowed to be on site.
 - 2) Prohibitions against certain combinations of regulated materials being on site or within certain proximity of each other.
 - 3) Special conditions for storage; the application of best technology.
 - 4) Additional buffering or containment controls; provisions for regular and/or spot compliance inspections, reporting and inventory requirements, and/or periodic updating of emergency response plans.
 - 5) Notice to the Fire Department when materials are brought on site.
 - 6) Other mitigation measures as determined by the Committee to be appropriate to the specific application and circumstances such that upon implementing and maintaining the conditions of approval the risk that a proposed use, project or establishment will be a danger to public health or safety is significantly reduced.

14. If the Committee finds that the applicant fails to meet the criteria and denies the issuance of a Hazardous Materials Permit, the denial shall not have bearing on other aspects of the use, project or establishment or on the use of other regulated materials for which a permit has or may be issued. Nor shall denial of the Hazardous Materials Permit preclude approval of any land use action, Building or Engineering Permit.
15. If the Committee denies the application for a Hazardous Materials Permit, the applicant may, upon proper application and payment of the appropriate fee, appeal to the Molalla City Council. Any such appeal shall be filed within seven (7) days from the date the Notice of Decision was mailed. If no appeal is filed within seven (7) days, the City's decision on the permit shall become final on the eighth (8) day after the Notice of Decision was mailed. A hearing before the Council shall be based on the record compiled during the Hazardous Materials Containment and Mitigation Review. Notice of Appeal shall be provided to all participants in the Hazardous Materials Containment and Mitigation Review process. The criteria for decisions by the Council shall be those listed in this code. Unless waived by the applicant, any decision of the Review Committee shall be rendered within 120 days of the date when the original application was deemed complete. Notwithstanding any other provision of the Zoning Code, the decision of the Council is final.
16. Because of the above procedure it is not necessarily a full engineering and structural or Fire Code review of the construction plans and specifications, participation in this process does not preclude further investigation, analysis and requirements at the Building Permit stage of development. However, an applicant may submit the materials and information developed for the Hazardous Materials Screening or Containment and Mitigation Review towards satisfaction of those requirements.
17. If the Committee finds the applicant fails to meet the criteria in subparagraph (1.B.(3)) and denies issuance of a Hazardous Materials Permit, but the applicant changes the process, procedures or use of the regulated material in question and prepares detailed plans and specifications clearly demonstrating that the approval can be met, the applicant may, upon proper application and payment of appropriate fees, file for reconsideration by the Committee.
18. Except as provided herein, any affidavit, exemption certificate or Hazardous Materials Permit presented to the City pursuant to the requirements of this chapter, shall apply only to the specific use, project or establishment in question; shall remain valid throughout the permit period and shall be transferable to subsequent owners of the facility. However, if any variable important to the decision making process is altered or if there is a change of occupancy type, a change in process, a change in the type, quantity or combination of regulated materials used at the site, or any other consequential change that would materially affect the determination as to whether the use, project or establishment is permitted, the affidavit, exemption certificate or Hazardous Materials Permit shall be deemed null and void and a new application required. If not deemed exempt or granted a new Hazardous Materials Permit within sixty (60) days of such change, such operations at the establishment shall be prohibited and shall cease. A continuing violation of prohibited operations shall be a violation for each such day of operation, shall be subject to the maximum fine as provided in the Molalla Municipal Code for each violation, and may be subject to other legal action.

21.60.200 REQUIREMENTS FOR ESTABLISHING THE HAZARDOUS MATERIALS PERMIT STANDARDS

1. The Review Body shall hold public hearings and accept testimony in order to develop administrative rules to accomplish the purpose and requirements of this subsection. In establishing the rules, the Review Committee may also incorporate by reference, in whole or in part any rules, regulations, standards, guidelines and model regulations adopted or developed by Federal, State, or local governments, public agencies, public interest groups or industry trade associations which the Committee deems germane and of value to the City.
2. In developing and implementing the Hazardous Materials Permit process, the administrative rules may be approved and become effective in more than one phase. The first phase shall, at a minimum, establish:
 - A. An “Exemption List” of regulated materials that are required to be periodically reported to the City, but that is exempt from the need for a Hazardous Materials Permit.
 - B. A “Regulated Materials List” of hazardous materials, substances and agents that may require a Hazardous Materials Permit.
 - 1) A “Prohibited Materials List” of regulated materials that, by their nature and action, are deemed to be to potentially dangerous to the public health and safety, regardless of concentration or amount, to be allowed within densely populated areas.
 - 2) A procedure for updating the lists.
 - C. The Review Committee shall then develop and recommend to the City Council consideration and adoption objectives standards for each listed regulated material which may require a Hazardous Materials Permit.
 - 1) The minimum threshold level of concern (concentration, volume, weight, etc.) that will trigger a Hazardous Materials Permit process.
 - 2) Impermissible combinations of selected regulated materials that may, due to chemical or synergistic reaction, trigger hazardous conditions beyond those caused absent the possibility of such combination or reaction.
 - 3) A standard set of conditions of approval (control technology, mitigating measures, etc.) to be applied where a given regulated material is beyond the minimum threshold of concern but where, if such conditions of approval are implemented and maintained, the regulated materials may be permitted.
 - 4) Minimum periodic reporting standards and procedures.
 - 5) Other objective standards deemed necessary to help preserve the health and safety of those within the area of concern.
 - D. Whether or not a Hazardous Materials Permit is required under this subsection, if a use, project or establishment contains regulated materials, it shall also comply with the requirements of the Department of Environmental Quality concerning these matters. Unless specifically preempted by state or federal law in these matters, if there is a conflict between state or federal regulations and this subsection, the provisions of the state and federal government shall supersede and prevail.