

AN ORDINANCE AMENDING CHAPTER TEN OF THE CODE OF ORDINANCES, CITY OF URBANA, ILLINIOS REGULATING REGIONAL POLLUTION CONTROL FACILITITES

WHEREAS, Public Act 82-682, "An act relating to the location of sanitary landfills and hazardous waste disposal sites" has been codified into 415 ILCS 5/39.2 and requires that the governing body of the municipality approve or disapprove the request for local siting approval for each pollution control facility which is subject to such review; and

WHEREAS, the City Council, City of Urbana, Illinois adopted ordinance number 9091-67 entitled "Regional Pollution Control Facility Siting and Licensing Ordinance", subsequently codified as Article III in Chapter 10 of the Urbana Municipal Code, which set forth procedures for conducting public hearings, making decisions regarding site location approval requests, and local licensing procedures; and

WHEREAS, in order to protect the public interest and to insure that current and complete information is made available to the City Council, it is necessary to amend said Article III.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That Chapter 10, "Solid Waste Management", of the Code of Ordinances, City of Urbana, Illinois, is hereby amended by repealing Article III, "Regional Pollution Control Facilities Siting", in it's entirety and by adding a new Article III, "Pollution Control Facilities Siting", to read as follows:

ARTICLE III. POLLUTION CONTROL FACILITIES SITING

10-50 Definitions.

The following words and phrases, when used in this Article, shall have the meanings respectively ascribed to them:

Act means the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.).

Agency is the Illinois Environmental Protection Agency.

Applicant means any person or entity who submits an Application to the City for site location approval for a Pollution Control Facility.

Application means the application for site location approval of a Pollution Control Facility filed by Applicant.

City means the City of Urbana.

Disposal means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

Nuisance means the doing of or the failure to do something that injuriously affects the safety, health or morals of the public, or works some substantial annoyance, inconvenience or injury to the public and all other acts designated as such.

Operator is any person or entity who operates a Pollution Control Facility.

Party means any person, in addition to the Applicant, who complies with the prehearing filing requirements set forth in section 10.59 and who may be affected by the proposed facility. "Party" includes the City, members or representatives of the governing authority of a municipality contiguous to the proposed Site or contiguous to the City and members or representatives of the Champaign County Board.

Pollution Control Facility is any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility or waste incinerator.

The following are not Pollution Control Facilities:

- (1) Waste storage sites regulated under 40 CFR, Part 761.42;
- (2) Sites or facilities used by any person conducting waste storage, waste treatment, waste disposal, waste transfer or waste incineration operation, or a combination thereof, for wastes generated by such person's own activities, when such wastes are stored, treated, disposed of, transferred or incinerated within the site or facility owned, controlled, or operated by such person, or when such wastes are transported within or between site facilities owned, controlled or operated by such person;
- (3) Sites or facilities at which the state is performing removal or remedial action pursuant to either 415 ILCS 5/22.2 or 55.3;
- (4) Abandoned quarries used solely for the disposal of concrete, earth materials, gravel, or aggregate debris resulting from road construction activities conducted by a unit of government or construction activities due

to the construction and installation of underground pipes, lines, conduit or wires off of the premises of a public utility company which are conducted by a public utility;

(5) Sites or facilities used by any person to specifically conduct a landscape composting operation;

(6) Regional facilities as defined by the Central Midwest Interstate Low-Level Radioactive Waste Compact;

(7) The portion of a site or facility where coal combustion wastes are stored or disposed of in accordance with 415 ILCS 5/21(r)(2) and (3);

(8) The portion of a site or facility used for the collection, storage or processing of waste tires as defined in 415 ILCS 5/53 et seq.;

(9) The portion of a site or facility where used oil is collected or stored prior to shipment to a recycling or energy recovery facility, provided that the used oil is generated by households or commercial establishments, and the site or facility is a recycling center or a business where oil or gasoline is sold at retail.

(10) The portion of a site or facility utilizing cold combustion waste for stabilization and treatment of only waste generated on that site or facility when used in connection with response actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the federal Resource Conservation and Recovery Act of 1976, or the Illinois Environmental Protection Act or as authorized by the Agency.

(11) Recycling Centers.

Recycling Center means a site or facility that accepts only segregated, nonhazardous, nonspecial, homogeneous, nonputrescible materials, such as dry paper, glass, cans or plastics, for subsequent use in the secondary materials market.

Sanitary Landfill means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, the regulations thereunder, and without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day's operation, or by such other methods and intervals as the Pollution Control Board may provide by regulation.

Storage Site is a site at which waste is stored. Storage Site includes transfer stations but does not include (i) a site that accepts or receives waste in transfer containers unless the waste is removed from the transfer container or unless the transfer container becomes stationary, en route to a disposal, treatment, or storage facility for more than 5 business days, or (ii) a site that accepts or receives open top units containing only clean construction and demolition debris, or (iii) a site that stores waste on a refuse motor vehicle or in the vehicle's detachable refuse receptacle for no more than 24 hours, excluding Saturdays, Sundays, and holidays, covered or enclosed and is stored on the same site as the refuse motor vehicle that transported the receptacle to the site.

Site means any location, place, tract of land, and facilities, including but not limited to buildings and improvements used for purposes subject to regulation or control by this Article.

Transfer Station means a site or facility that accepts waste for temporary storage or consolidation and further transfer to a waste disposal, treatment or storage facility. Transfer Station includes a site where waste is transferred from (1) a rail carrier to a motor vehicle or water carrier; (2) a water carrier to a rail carrier or motor vehicle; (3) a motor vehicle to a rail carrier, water carrier or motor vehicle; (4) a rail carrier to a rail carrier, if the waste is removed from the rail car; or (5) a water carrier to a water carrier, if the waste is removed from a vessel. Transfer Station does not include (i) a site where waste is not removed from the transfer container, or (ii) a site that accepts or receives open top units containing only clean construction and demolition debris, or (iii) a site that stores waste on a refuse motor vehicle or in the vehicle's detachable refuse receptacle for no more than 24 hours, excluding Saturdays, Sundays, and holidays, but only if the detachable refuse receptacle is completely covered or enclosed and is stored on the same site as the refuse motor vehicle that transported the receptacle to the site.

Treatment means any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any waste so as to neutralize it or render it nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

Waste means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or coal combustion by-products as defined in Section 3.94 of the Act, or industrial discharges which are point sources subject to permits under discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended, or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended, or any solid or dissolved material from any facility subject to the Federal Surface Mining Control and Reclamation Act of 1977 or the rules and regulations adopted by the State of Illinois pursuant thereto.

Waste Disposal Site is a site on which solid waste is disposed.

Unless otherwise defined herein, all words and terms used in this Article shall have the meanings ascribed to them in the Illinois Environmental Protection Act, as amended from time to time.

10.51 Pre-filing Conference

At least forty-five (45) days prior to the filing of an Application with the City Clerk, the Applicant shall contact the City Department of Community Development to schedule a pre-application conference with City staff. Applicant is encouraged to discuss with staff the type, size and

location of its facility. City staff will, at Applicant's request, pre-view an Application prior to filing to determine if the proposed Application complies with the form of Application required by the City. Any pre-filing conferences, which have occurred prior to adoption of this Article, shall be deemed in compliance with this section.

10.52 Application

(a) Applications for site location approval shall be submitted on 8 1/2" x 11" paper. The pages of the Application shall be consecutively numbered. The Application shall contain the identification and address of the Applicant, the current owner(s) of the site and the proposed operator of the facility. If either the Applicant or the owner(s) is/are a land trust, the Application shall contain the identity of each beneficiary and the specific interest of each beneficiary in the land trust.

(b) Each Application must address the nine siting criteria set forth in the Act (415 ILCS 5/39.2). Those nine criteria and the minimum documentation to be submitted by the Applicant in support of its Application as to each criteria are as follows:

(1.) The facility is necessary to accommodate the waste needs of the area that it is intended to serve.

a. A description of the area to be served by the proposed facility and a statement of the needs of such area for such a facility;

b. A list of the existing Pollution Control Facilities located within or serving or capable of serving the area proposed to be served and, with respect to each such facility, the following information shall be provided: Location, size, owner and/or operator, type of Pollution Control Facility, remaining capacity, probable life of the proposed facility, and types of wastes received;

c. The expected types of hazardous, nonhazardous and special wastes, amounts and methods of treatment or storage of all wastes proposed for the pollution control facility, and the origins of these wastes and the Applicant's plan to preclude acceptance of unauthorized wastes;

(b)(2) The facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected.

a. A planimetric map showing the location of the Site and the area within 1,500 feet of the Site.

b. A plat or boundary survey of the Site, including the legal description of the Site.

c. A site plan showing details of the facility and the surrounding area within 500 feet of the Site including, but not limited to,:

i. Fences, easements, utilities, railroad spurs, buildings and other structures;

ii. Roads, entrances, parking areas, and driveways;

iii. Planned landscaping and screening; and

d. In the case of a sanitary landfill:

i. Cross sections, both existing and proposed;

ii. All existing water wells, whether active or abandoned, within fifteen hundred (1,500) feet of the Site;

iii. All ground water and/or methane monitoring wells, both existing and planned, whether public or private; and

iv. Core sample locations on and within two hundred (200) feet of the site.

v. Storage tanks, whether above ground or below ground; and,

vi. all utilities.

e. A statement of the plan of operation for the proposed facility, including, but not limited to, the following:

i. Method of landfilling, incineration, resource recovery or other process including flow diagrams depicting waste flow by type and volume from initial acceptance at the facility to final disposition;

ii. Hours of operation;

iii. Number, duties and training of facility personnel;

iv. Litter, vector, dust and odor control on-site and within one and one-half (1 1/2) miles of the site;

v. Surface drainage and erosion control;

vi. Fire and hazardous material control;

vii. Corrective actions for spills and other operational accidents;

viii. Collection and disposal of leachate generated from activities on-site;

ix. Number and types of equipment proposed to be used;

f. If applicable, the stages of development or use;

g. Building floor plans illustrating material handling equipment and processes as well as architectural elevations including exterior construction materials;

h. A stormwater management plan consistent with chapter 21, section 21-42 of the City's Code of Ordinances and any NPDES permit or application thereof required by the Agency;

i. A closure and/or end use plan; and,

j. A summary of the experience of the Applicant and the proposed Operator in operating other Pollution Control Facilities including the location, dates of operation, and any operating violations by the Applicant or Operator or any subsidiary or parent corporation of the Applicant or Operator that resulted in a fine in excess of \$500.00. The Director of Public Works shall determine the scope of information required under this paragraph and shall advise the applicant of such determination not later than fifteen (15) calendar days following the initial pre-filing meeting.

(b)(3) *The facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property.*

a. Map showing land uses within 2,500 feet of the perimeter of the site.

b. Map showing zoning of all land within 2,500 feet of the perimeter of the site.

c. City's Comprehensive Plan showing projected land uses of the site and within 2,500 feet of the perimeter of the site.

d. Report by MAI appraiser on projected impact on property values if facility was constructed.

(b)(4) (A) *For a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100-year flood plain or the site is floodproofed; (B) for a facility that is a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100-year flood plain, or if the facility is a facility described in subsection (b) of Section 22.19a of the Act, the site is flood-proofed;*

a. A detailed topographic survey of the subject site and the surrounding area within five hundred (500) feet that shows the boundary of the one-hundred-year floodplain.

b. Statement by project architect and/or engineer that the site is or will be floodproofed.

c. The identification of the drainage district in which the site is located.

(b) (5) *The plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents.*

a. A statement of the plan of operation for the proposed facility, including, but not limited to, the following:

1. Hours of operation;
2. Safety personnel;
3. Fire and hazardous material control;
4. Corrective actions for spills and other operational accidents;

b. A statement of the operator's ability to acquire certificates of insurance to cover accidents, such as fires, explosions, nonsudden accidental occurrences and pollution impairment.

(b) (6) *The traffic patterns to or from the facility are so designated as to minimize the impact on existing traffic flows.*

a. A report of off-site traffic impact regarding the proposed site including the anticipated number of vehicles and their size, weight and directional distribution, and structural adequacy of affected pavements. The report shall include a traffic abatement and control plan to address negative traffic impacts. The report must be prepared by an engineer experienced in traffic engineering and registered in the state of Illinois.

(b) (7) *If the facility will be treating, storing or disposing of hazardous waste, an emergency response plan for the facility.*

a. A copy of the contingency plan prepared pursuant to the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.) The plan shall include, but is not limited to, notification, containment and evacuation procedures to be used in the event of an accidental release.

b. The chemical safety contingency plan prepared pursuant to the Illinois Chemical Safety Act.

c. Compliance with the requirements of the Illinois Emergency Management Agency.

d. Any other plan necessary to comply with this requirement.

(b) (8) *The facility is consistent with the Champaign County Solid Waste Management Plan.*

a. A statement of compliance from Champaign County that the facility is in compliance with the Champaign County Solid Waste Management Plan.

(b) (9) *If the facility will be located within a regulated recharge area, proof that any and all applicable requirements specified by the Illinois Pollution Control Board for such area have been met.*

(c) Any testimony submitted by Applicant in support of its Application shall be either in the form of written testimony if the witness will not testify at the public hearing or a summary of the witness' opinions that he/she will testify to at the public hearing. In either event, the Application must contain the name, occupation, professional address, and qualifications of each witness.

(d) Each Application shall contain all documents, if any, submitted as of that date to the Illinois Environmental Protection Agency pertaining to the proposed facility, (except trade secrets as determined under Section 7.1 of the Act) and any correspondence with the Agency relating thereto.

(e) Each application shall contain a certification that no later than fourteen (14) days prior to filing the Application the Applicant caused written notice of such Application to be served and published in accordance with section 10.53 Pre-filing Notice as contained in this Article.

10.53 Pre-filing Notice.

(a) No later than 14 days prior to filing the Application, the Applicant shall cause written notice of such Application to be served either in person, by registered mail, or by certified mail return receipt requested, on the owners of all property within the site not solely owned by the Applicant, and on the owners of all property within 250 feet in each direction of the lot line of the site, said owners being such persons or entities which appear from the authentic tax records of Champaign County; provided, that the number of all feet occupied by all public roads, streets, alleys and other public ways shall be excluded in computing the 250 feet requirement; provided further, that in no event shall this requirement exceed 400 feet, including public streets, alleys and other public ways.

(b) Such written notice shall also be served upon members of the General Assembly from the legislative district in which the proposed facility is located and shall be published in a newspaper of general circulation published in Champaign County.

(c) Such notice shall state the name and address of the Applicant, the location of the proposed Site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for Site approval will be submitted, and a description of the right of persons to comment on such request in writing until 30 days after the last date of the public hearing.

10.54 Filing Fee.

(a.) An Application fee in the form of a certified or cashier's check payable to the City or a line of credit at a local financial institution acceptable to the City shall be paid by the Applicant upon filing of the Application. The City shall apply the filing fee at its discretion to cover reasonable and necessary costs, including but not limited to, notice costs, court reporter costs, transcription costs, city consultant costs, city staff

costs, hearing officer costs, and attorneys fees, and other expenses incurred by the City in conducting the review of the Application and, in the event Site approval is granted the preparation of a Site approval ordinance.

(b.) The amount of the Application fee to be submitted pursuant to this section shall be as follows:

Transfer station	\$50,000.00
Resource recovery facility	\$75,000.00
Sanitary landfill	\$250,000.00
Waste storage site	\$50,000.00

(c.) In the event that at any time prior to the conclusion of the Site location approval decision, the City has expended such sums so as to reduce the balance of the Application fee to a figure less than five thousand dollars (\$5,000.00), the Applicant shall, within seven (7) calendar days of receipt of written notice thereof, contribute an additional sum as determined by the City to cover additional costs that have been or will be reasonably incurred by the City as a direct result of the Applicant's Application for Site approval.

(d.) Upon the conclusion or termination of any proceedings under this Article, a final accounting and summary of all authorized reasonable and necessary expenditures shall be made. Any portion of an Application fee not required for reimbursement to the City for reasonable and necessary costs and expenses under this Article incurred by the City shall be returned to the Applicant. Should there be costs and/or expenses in excess of the amount paid by the Applicant in the Application fee, the Applicant shall bear any and all additional reasonable and necessary costs.

10.55 Filing of Application.

(a) The original and twenty (20) complete copies of the Application for site location approval, including twenty (20) copies (3 full size and 17 reductions) of all site plans, exhibits, and maps, shall be submitted to the office of the City Clerk. Upon receipt of any such Application and the receipt of the appropriate filing fee, the City Clerk shall date stamp the Application and immediately deliver one (1) copy of the Application to the mayor of the City.

(b) A copy of the Application shall be made available for public inspection in the office of the City Clerk and local public library and members of the public shall be allowed to obtain a copy of the Application or any part thereof from the City Clerk upon payment of the actual cost of reproduction.

10-56 Amendment of Application.

(a) Any information not included in the original Application shall be inadmissible at the public hearing unless either allowed by the hearing officer pursuant to section 10-62, as rebuttal testimony and/or 10-63 of this article or the Application is amended. This paragraph shall not pertain to

plans, maps or other drawings or information contained in the Application that are enlarged for public presentation purposes.

(b) At any time prior to completion by the Applicant of the presentation of the Applicant's factual evidence and an opportunity for cross-questioning by any Party at the public hearing, the Applicant may file not more than one (1) amended Application. Said amended Application shall conform to the requirements of section 10.52.

(c) If an amended application is filed, the time limitation for final action set forth in section 10.66(c) of this Article shall be extended ninety (90) days.

10.57 Establish Hearing Date.

Within fifteen (15) working days of the date an Application is filed with the City Clerk, the Mayor shall determine the date, time and location upon which the public hearing on such Application shall be held. The public hearing must be scheduled for a date no sooner than ninety (90) days but no later than one hundred twenty (120) days from the date the Application was filed with the City Clerk.

10.58 Notices of Application and Hearing.

The Mayor shall notify the City Clerk of the date upon which such hearing shall be held and shall request the City Clerk to cause notice of the filing of the Application and of such hearing to be made as follows:

(a) The City shall cause to be published two (2) notices in a newspaper of general circulation published in Champaign County. One (1) such notice shall be published no later than sixty (60) days from the date the Application was filed with the City Clerk and one (1) such notice shall be published no later than seventy-five (75) days from the date the Application was filed with the City Clerk. Such notices shall consist of the following:

1. The names and addresses of the Applicant;
2. The legal description of the Site;
3. The street address of the Site; if there is no street address applicable to the property, a description of the Site with reference to location, ownership or occupancy or in some other manner that will reasonably identify the Site to residents of the neighborhood;
4. The nature and size of the proposed facility;
5. The nature of the activity proposed;
6. The probable life of the proposed facility;
7. The time and date of the public hearing;
8. The location of the public hearing; and
9. A statement that any person who may be affected by the siting of the facility may file an appearance twenty-one (21) days before the hearing to become a Party and that

twenty (20) copies of all testimony and exhibits to be submitted at the public hearing by a Party must be pre-filed with the City Clerk at least twenty-one (21) days prior to the public hearing and one (1) copy served upon the hearing officer and each party.

(b) No later than 14 days prior to the start of the public hearing, notice of the date, time and place of such hearing shall be delivered by certified mail to all members of the General Assembly from the district in which the proposed Site is located, to the governing authority of every municipality contiguous to the proposed site or contiguous to the City, to the Champaign County Board and to the Agency.

(c) The City shall cause to be published in a newspaper of general circulation in Champaign County notice of the public hearing published as a display advertisement at least once during the week preceding the public hearing. Such notice shall consist of all items described in paragraph (a) above except for items 2. and 9.

(d) The City shall send notice of the public hearing by certified mail to all surrounding property owners within one thousand (1,000) feet of the site at least ten (10) days prior to the public hearing.

10.59 Additional Parties.

(a) Any qualified person or entity (other than the Applicant) who desires to participate in the public hearing as a Party as defined in this Article shall file an entry of appearance with the City Clerk at least twenty-one (21) days prior to the public hearing and serve a copy upon the hearing officer. Any such Party shall submit either written testimony if the witness will not testify at the public hearing or a summary of the witness' opinions that he/she will testify to at the public hearing, the name, occupation, professional address, and qualifications of each witness and their testimony, and all other evidence relating to the application requirements pursuant to section 10.52, including, but not limited to, reports, studies and exhibits that the party desires to submit for the record by filing the original and twenty (20) copies of the same with the City Clerk at least twenty-one (21) days prior to the public hearing and by serving one (1) copy upon the hearing officer and one (1) copy upon each other Party. The City Clerk shall date stamp any appearance and evidence upon receipt. In the case of documentary evidence, any person shall be allowed to obtain copies of said evidence from the City Clerk upon payment of the actual cost of reproduction.

(b) Any Party appearing at the public hearing shall have the right to give testimony and comment on the suitability of the Site location for the proposed use subject to this Article.

(c) Any Party shall have the right to be represented by an attorney at said public hearing and the right to reasonable cross examination of witnesses.

(d) Only the Applicant and other Parties who have complied with this section can actively participate in the public hearing. All other persons and entities are limited to submitting written comments as allowed in section 10.64.

10.60 Host Agreement.

If, prior to making a final local siting decision, the City has negotiated and entered into a host agreement with the Applicant, the terms and conditions of the host agreement, whether written or oral, shall be disclosed and made a part of the hearing record for that local siting proceeding. In the case of an oral agreement, the disclosure shall be made in the form of a written summary jointly prepared and submitted by the City and the siting Applicant shall describe the terms and conditions of the oral agreement.

10.61 Hearing Officer.

(a) The Mayor shall appoint the hearing officer for the public hearing.

(b) The hearing officer shall preside over the public hearing and shall make any decisions concerning the admission of evidence and the manner in which the hearing is conducted subject to this Article. The hearing officer shall make all decisions and rulings in accordance with fundamental fairness. The powers of the hearing officer shall include, but not be limited to, the following:

(1) Preside over the public hearing to ensure fundamental fairness;

(2) Require everyone to state his or her position with respect to the proposal;

(3) Administer oaths and affirmations;

(4) Examine witnesses and direct witnesses to testify for the sole purpose of clarifying the record established by the Parties at the public hearing;

(5) Regulate the course of the hearing as set forth in this Article including the conduct of the parties, their counsel and other persons;

(6) Establish reasonable limits on the duration of the testimony and questioning of any witness and limit repetitious or cumulative testimony and questioning;

(7) Consider and rule upon objections and evidentiary questions;

(8) Consider and rule as justice may require upon appropriate motions;

(9) Grant recesses of the public hearing determined to be required; and

(10) Cause a written transcript to be made of the public hearing and may cause a daily audio-tape(s) and cause such transcript and audio-tape(s), if any, to be delivered to the City Clerk.

10.62 Public Hearing.

The public hearing shall be open to the public. Any City Council member and any other officer(s) or employees of the City may attend.

The public hearing shall be conducted by the hearing officer substantially as follows:

- (a) Call to order.
- (b) Introduction of the hearing officer.
- (c) Acknowledgment of receipt of fees, certification of notices, and date of filing of the completed Application for Site location approval.
- (d) Identification of Parties which pre-filed testimony and which pre-filed exhibits pursuant to this article.
- (e) The Applicant, and other Parties may make an opening statement.
- (f) The hearing officer shall then enter into the record the pre-filed written testimony from the Applicant as if read and/or any witnesses the Applicant may wish to call and any evidence it wishes to present. Upon the close of the cross-examination of Applicant's witnesses, the hearing officer shall enter into the record the pre-filed written testimony by other Parties as if read and/or their witnesses and the evidence they wish to present. These other parties may or may not be represented by counsel. Upon the close of the Applicant's and other Parties' testimony and evidence, the hearing officer shall enter into the record the pre-filed written testimony by the City as if read and/or its witnesses and the evidence it wishes to present. All witnesses of the Applicant and other Parties, including the City, are subject to cross-examination by the Applicant and any other Party. Upon the close of the City's presentation of evidence, the Applicant will be allowed to present rebuttal evidence at the discretion of the hearing officer. Any sur-rebuttal will also be at the hearing officer's discretion.
- (g) The testimony submitted prior to hearing will be entered into the record as if read, unless the hearing officer determines that it will aid public understanding to have the testimony read. Modifications to previously submitted testimony and exhibits may be allowed by the hearing officer at hearing provided that such modifications are either nonsubstantive in nature or would not materially prejudice another Party's participation at hearing. Objections to such modifications are waived unless raised at hearing.
- (h) Everyone shall testify under oath. Testimony may include the use of exhibits. Everyone shall be subject to reasonable questioning as follows: direct, cross questioning, redirect, recross, etc. After all parties have presented testimony, reasonable rebuttal, sur-rebuttal, etc., may be allowed at the discretion of the hearing officer.

- (i) Should any issues, facts, data, or other evidence arise during the course of the public hearing, which were not apparent or reasonably foreseeable by any party from the Application as filed with the City Clerk, such situation may constitute grounds for a recess in the public hearing for a period not to exceed five (5) working days to allow all parties time to prepare responses to such evidence. Upon reconvening the public hearing, the hearing officer may allow admission of such additional information as comports with the hearing officer's determination of fundamental fairness.
- (j) Closing statement including legal argument by Applicant, other Parties and the City subject to limitations as imposed by the hearing officer.
- (k) Rebuttal statement, if any, by the Applicant, subject to limitations as imposed by the hearing officer.
- (l) Hearing closed.

10.63 Motions.

(a) All motions shall be in writing, unless made orally on the record during the public hearing. The original and twenty (20) copies of any written motion and proof of service shall be filed with the city clerk ten (10) days prior to the date of the public hearing and one (1) copy shall be served upon the hearing officer and upon each party.

(b) At any time prior to the public hearing and after receipt of the motion, any other party may file a response to the motion. If no response is filed, the parties shall be deemed to have waived objection to the granting of the motion, but such waiver of objection does not bind the hearing officer in a decision on the motion. Unless undue delay or material prejudice would result, the hearing officer shall not grant or deny any motion before the opening of the public hearing.

(c) The moving party shall not have the right to reply, except as permitted by the hearing officer to prevent material prejudice.

(d) No oral argument will be heard on a motion before the hearing officer unless so directed by the hearing officer.

(e) No interlocutory appeal may be taken from a ruling on a motion by the hearing officer.

(f) The filing of any motion under this section shall not stay the proceedings or extend the time for the performance of any act.

10-64 Public comments.

(a) The City Clerk shall receive written comment from any person concerning the appropriateness of the proposed Site location. Upon receipt of any such written comment the City Clerk shall date stamp same and shall file such written comment and the postmarked envelope in which comment is received.

(b) Copies of such written comments shall be made available for public inspection in the office of the City Clerk, and any person shall be allowed to obtain copies of any written comment upon payment of actual cost of reproduction.

(c) Any written comment received by the City Clerk or postmarked not later than thirty (30) days after the last date of the public hearing shall be made part of the record of the public hearing as hereinafter described, and the City Council shall consider any such timely written comments in making its final determination concerning said Application. In the event that the thirtieth day falls on a Saturday, Sunday or holiday, the next day on which mail is delivered shall be considered the thirtieth day for purposes of this section.

10-65 Record of Proceedings.

(a) The hearing officer shall be responsible for keeping the record of said hearing and shall file the record with the City Clerk within forty-five (45) days after the date of the last public hearing.

(b) The record shall consist of the following:

(1) The Application for Site location approval as described in section 10.52 hereof.

(2) Certificate of notice given by Applicant pursuant to section 39.2(b) of said Act.

(3) All testimony, reports, studies, exhibits, written comments, or documents received into evidence at the public hearing.

(4) The written transcript of the public hearing and the daily audiotape(s), if any.

(5) Written comments filed by any person received by the City Clerk postmarked within thirty (30) days after the date of the last public hearing.

(c) The city clerk shall be responsible for certifying all copies of the record of the public hearing.

10.66. Site location approval ordinance.

(a) The City Clerk shall transmit a certified copy of the record of the public hearing to each member of the City Council within fifty (50) days after the date of the close of the public hearing.

(b) The Applicant shall have the burden of proof of the suitability of the site location for the proposed use. In making its decision on the Application for Site location approval, the City Council shall base its decision on the following criteria:

(1) The facility is necessary to accommodate the waste needs of the area it is intended to serve;

(2) The facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;

(3) The facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;

(4) The facility is located outside the boundary of the one-hundred-year flood plain, or the site is flood-proofed;

(5) The plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;

(6) The traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;

(7) If the facility will be treating, storing or disposing of hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release;

(8) If the facility is to be located in a county where the county board has adopted a solid waste management plan, the facility is consistent with that plan.

(9) If the facility will be located within a regulated recharge area, any and all applicable requirements specified by the Illinois Pollution Control Board for such area have been met; and

(c) The City Council shall consider the certified record of proceedings shall make a determination concerning the Application, and, if it approves the Application, pass a Site approval ordinance not later than one hundred and eighty (180) days after the filing of the Application. If the Application was amended by the Applicant, the city council shall make its final determination within 270 days of the initial filing of the Application. The decision of the City Council shall be in writing and shall specify the City Council's finding of fact as to each of the nine criteria and a determination of whether or not the Applicant met its burden of proof as to each criteria. The findings and determinations of the City Council shall be mailed to each Party (including the Applicant) and shall be made available for public inspection at the City Clerk's office and may be copied upon payment of the cost of reproduction.

(d) If the City Council approves the Application, it shall adopt an ordinance approving the specific facility for the specific Site within 180 days after the filing of the Application.

(e) The City Council, in granting approval for a site, may impose such conditions as may be reasonable and necessary to accomplish the purposes of section 39.2 of the Act and are not inconsistent with regulations promulgated by the Illinois Pollution Control Board, including the right of the City to make periodic inspections of the facility to determine whether or not it is being operated in a manner that is consistent with this Article and with any special conditions imposed by the City in the site location approval ordinance.

(f) Such Site location approval ordinance shall be mailed to all Parties and shall be available for public inspection at the office of the city clerk and may be copied upon payment of the actual cost of reproduction.

(g) This Site location approval ordinance shall expire at the end of two (2) calendar years from the date upon which it is granted (3 years for a landfill) unless within that period the Applicant has made Application to the Agency for a permit to develop the site.

10.67 Transfer of Siting Approval.

Siting approval obtained pursuant to this Article is transferable and may be transferred to a subsequent owner or Operator. In the event that siting approval has been transferred to a subsequent owner or Operator, that subsequent owner or Operator assumes and takes subject to any and all conditions imposed upon the prior owner or Operator by the City pursuant to section 10.66. However, any such conditions imposed pursuant to that Section may be modified by agreement between the subsequent owner or Operator and the City. Further, in the event that siting approval obtained pursuant to this Article has been transferred to a subsequent owner or Operator, that subsequent owner or Operator assumes all rights and obligations and takes the facility subject to any and all terms and conditions of any existing host agreement between the prior owner or Operator and the City.

10.68 Restricted Re-filing.

An Applicant may not file a request for site location approval which is substantially the same as an Application which was disapproved pursuant to a finding against the applicant under any of the criteria provided for in section 10.52 within the preceding two (2) years.

10.69. Operator's License

(a) No person shall operate any Pollution Control Facility without first obtaining a license from the city comptroller and without first paying the appropriate fee as specified in chapter 14 of this Code. Such fee shall be submitted to the city comptroller in conjunction with an application for a license and said fee shall be made payable to the City. It shall be a precondition to obtaining such license that a site location approval ordinance has been adopted by the City Council for said Pollution Control Facility. Any such license may be suspended or revoked if the licensee violates any provision of this Article or any special condition imposed on said Pollution Control Facility by the City Council. Any such Operator's License is not transferable, and a new license shall be required for any change in the Operator of said Pollution Control Facility.

(b) During the term of any such license required by section 10.69(a), above, the Operator shall post a maintenance fund in the amount of fifteen thousand dollars (\$15,000.00) to be used by the City to abate Nuisances created by the operation of said Pollution Control Facility. The amount of the maintenance fund must be submitted by the Operator to the city comptroller after the Operator's application for a license has been approved and must be received by the City prior to issuance by the City of the Operator's license. If, upon written notice to the Operator to abate a Nuisance, the Operator fails to abate the nuisance within forty-eight (48) hours, or otherwise to satisfy the City that the Nuisance will be abated in a reasonable

time, the City will access the maintenance fund and use those funds to take action to abate the Nuisance. In the event the City draws on the maintenance fund, the Operator will deposit additional funds within seven (7) calendar days thereafter to maintain a minimum balance of fifteen thousand dollars (\$15,000.00). Upon expiration of a license, all monies remaining in the maintenance fund shall be refunded to the licensee.

10-70. Severability.

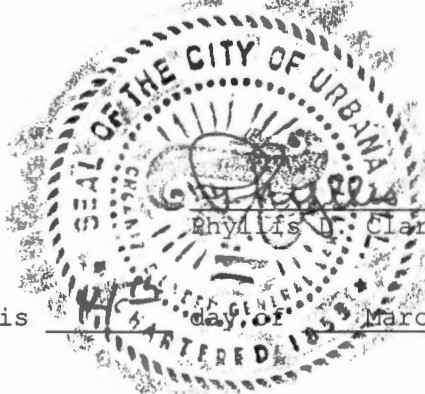
If any provision of this Article or the application thereof to any Party, person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Article which can be given effect without the invalid provisions or applications of this Article and to the end that the provisions or applications of this Article are declared to be severable.

PASSED by the City Council this 6th day of March,
2000.

AYES: Hayes, Huth, Kearns, Patt, Taylor, Whelan, Wyman

NAYS:

ABSTAINS:



Rhonda D. Clark
Rhonda D. Clark, City Clerk

APPROVED by the Mayor this 4th day of March,
2000.

Tal Satterthwaite
Tod Satterthwaite, Mayor