ORDINANCE NO. 6365

AN ORDINANCE TO AMEND CHAPTER 4.60 "HAZARDOUS SUBSTANCES" OF THE 2015 MUNICIPAL CODE OF COUNCIL BLUFFS, IOWA, BY REPEALING EXISTING SECTIONS 4.60.010 THROUGH 4.60.080.

BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA

SECTION 1. That Chapter 4.60 "Hazardous Substances" of the 2015 Municipal Code of Council Bluffs, Iowa, is hereby amended by repealing existing Sections 4.60.010 through 4.60.080 as follows:

~~4.60.010 - Purpose.~~
~~In order to reduce the danger to public health, safety and welfare from the spills of hazardous substances, these regulations are promulgated to establish responsibility for the removal and cleanup of spills within the city limits.~~

~~4.60.020 - Definitions.~~
~~For the purpose of this chapter, these words have the following meanings:~~

~~(1) "Cleanup" means action necessary to contain, collect, control, identify, analyze, clean up, treat, disperse, remove, or dispose of a hazardous substance or hazardous waste. (2) "Hazardous condition" means any situation involving the actual, imminent or probable spillage, leakage, or release of a hazardous substance or hazardous waste onto the land, into the water, or into the atmosphere which creates an immediate or potential danger to the public health or safety. (3) "Hazardous substance" means any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that generates pressure through decomposition, heat, or other means. "Hazardous substance" may include any hazardous waste identified or listed by the administrator of the United States Environmental Protection Agency under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, or any toxic pollutant listed under Section 307 of the Federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous substance designated under Section 311 of the Federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous material designed by the secretary of transportation under the Hazardous Materials Transportation Act. (4) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, biological degradation, leaching from precipitation, or physical, chemical, or infectious characteristics, has either of the following effects: (a) Causes or significantly contributes to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (b) Poses a substantial danger to human health or the environment. "Hazardous waste" may include, but is not limited to, wastes that are toxic, corrosive, or flammable or irritants, strong sensitizers or explosives. (5) "Hazardous waste" does not include: (a) Agricultural wastes, including manures and crop residues that are returned to the soil as fertilizers or soil conditioners; (b) Source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979. (6) "Person" means individual, corporation, firm, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity. (7) "Responsible person" means a person who at any time produces, handles, stores, uses, transports, refines, or disposes of a hazardous substance or hazardous waste, the release of which creates a hazardous condition,~~

including bailees, carriers, and any other person in control of a hazardous substance or hazardous waste when a hazardous condition occurs, whether the person owns the hazardous substance or waste or is operating under a lease, contract, or other agreement with the legal owner of the hazardous substance or waste.

4.60.030 - Cleanup required.

(a) Whenever a hazardous condition is created so that a hazardous substance may enter the environment or be emitted into the air or discharged into any waters, including ground waters, the responsible person shall cause the condition to be remedied by a cleanup as defined by Section 4.60.020, as rapidly as feasible to an acceptable safe condition, and restore the affected area to its state prior to the hazardous condition as far as practicable. The cost of cleanup shall be borne by the responsible person. (b) If the responsible person does not cause the cleanup to begin in a reasonable time in relation to the hazard and circumstances of the incident, the city may, by authorization of the mayor or his/her designee, give reasonable notice based on the character of the hazardous condition, setting a deadline for commencing and accomplishing the cleanup, or the city may proceed to procure cleanup services. If the cost of the cleanup is beyond the capacity of the city to finance, the mayor or his/her designee may report to the city council and immediately seek any state or federal funds available for such cleanup.

4.60.040 - Liability for cleanup costs.

The responsible person shall be strictly liable to the city for all of the following:

(1) The reasonable costs incurred by the city in containing and/or controlling a hazardous condition; (2) The reasonable cleanup costs incurred by the city as a result of the failure of the person to clean up a hazardous substance or waste involved in a hazardous condition caused by that person; (3) The reasonable costs incurred by the city to evacuate people from the area threatened by a hazardous condition caused by the person; (4) The reasonable damages to the city for the injury to, destruction of, or loss of city property, including parks and roads, resulting from a hazardous condition caused by that person, including the costs of assessing the injury, destruction, or loss. (5) The costs referenced above shall be as determined by the fire chief for: manpower, apparatus, ambulance/rescue squad, command vehicle or utility truck, supplies and outside services, mileage, and decontamination, repairs, replacement, maintenance of equipment, apparatus or supplies, plus a reasonable administrative fee. It is unlawful for any responsible person to fail to pay a billing for such services within thirty (30) days of receipt therefor.

4.60.050 - Notifications.

(a) A person manufacturing, storing, handling, transporting, or disposing of a hazardous substance or waste shall notify the Council Bluffs fire chief of the occurrence of a hazardous condition as soon as possible, but no later than one hour after the onset of the hazardous condition or discovery of the hazardous condition. The fire chief shall notify the proper state office in the manner established by the state. (b) Any city employee who discovers a hazardous condition shall notify the fire department, which shall notify the proper state office in the manner established by the state.

4.60.060 - Police authority.

If the circumstances reasonably so require, the Council Bluffs fire chief or police chief, or their representative(s), may:

~~(1) Evacuate persons, even from their homes, to areas away from the site of a hazardous condition; and~~
~~(2) Establish perimeters or other boundaries at or near the site of a hazardous condition and limit access to cleanup personnel.~~
~~No person shall disobey an order of the fire chief or any other deputy or peace officer/law enforcement officer issued under this section.~~

~~4.60.070 - City liability.~~
~~The city of Council Bluffs shall not be liable to any person for claims of damages, injuries, or losses resulting from any hazardous condition. Except, if the city is the responsible person as defined in Section 4.60.020(7).~~

~~4.60.080 - Penalty.~~
~~Any person found guilty of a violation of the provisions of this chapter shall, upon conviction, be subject to the penalty provisions of Section 8.02.020 of this code. Each day that a violation is allowed to continue shall constitute a separate and distinct violation. At the discretion of the city attorney, any violation of the provisions of this chapter may be pursued as a municipal infraction according to the terms of Chapter 1.95 in lieu of criminal prosecution.~~

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage and publication, as by law provided.

PASSED
AND October 22, 2018.
APPROVED

_____
MATTHEW J. WALSH Mayor

Attest: _____
JODI QUAKENBUSH City Clerk

First Consideration: 10-8-18
Second Consideration: 10-22-18
Public Hearing: N/A
Third Consideration: _____