

ORDINANCE NO. 175

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF AFTON, IOWA, 1998, BY AMENDING CHAPTER 35 HAZARDOUS SUBSTANCE SPILLS.

Be It Enacted by the City Council of the City of Afton, Iowa:

SECTION 1. CHAPTER MODIFIED. Chapter 35.01 through 35.07 of the Code of Ordinances of the City of Afton, Iowa, 1998 are repealed and the following adopted in lieu thereof:

35.01 PURPOSE. In order to reduce the danger to public health, safety and welfare from the storage, transportation, and spills of hazardous substances, these regulations are promulgated to establish responsibility for the removal and cleanup of spills, leakage or release of hazardous substances which create an immediate and/or a potential danger to the public health or safety within the boundary limits of Afton.

35.02 DEFINITIONS. For the purpose of this ordinance, these terms have the following meanings:

- a. "Hazardous waste" means such wastes as defined in Section 455B.411 Subsection 3 (a) and (b), Code of Iowa, 2005.
- b. "Hazardous substance" means any substance as defined in Section 455B.411 Subsection 2, Code of Iowa, 2005.
- c. "Hazardous condition" means any circumstances as defined in Section 455B.381 Subsection 4, Code of Iowa, 2005.
- d. "Release" means a threatened or real emission, discharge, spillage, leakage, pumping, pouring, emptying or dumping of a hazardous substance into or onto the land, air, or waters of Afton as stated in Section 455B.381 Subsection 8, Code of Iowa, 2005.
- e. "Responsible person" means a person who at any time produces, handles, stores, uses, transports, refines, or disposes of a hazardous substance, the release of which creates a hazardous condition, including bailees, carriers, and any person in control of a hazardous substance when a hazardous condition occurs, whether the person owns the hazardous substance or is operating under a lease, contract, or other agreement with the legal owner of the hazardous substance, as defined in Section 455B.381 (7), Code of Iowa, 2005.
- f. "Cleanup" means the same as defined in Section 455B.381 (1), Code of Iowa, 2005.
- g. "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical or biological character or composition of a hazardous substance so as to neutralize it or to render the substance non-hazardous, safe for transport, amenable for recovery and for storage, or to reduce it in volume. "Treatment" includes any activity or processing composition designed to change the physical form or chemical composition of a hazardous substance to render it non-hazardous, as defined in Section 455B.411(10), Code of Iowa, 2005.
- h. "Incident Commander" means the Fire Chief or his or her duly appointed designee, of the Fire Department in whose district said release or potential release

has occurred. The Chief or his or her duly appointed designee may also appoint one or more Fire Chiefs or Assistant Fire Chiefs of any municipality or Fire District or Fire Department as his or her temporary deputy, or may delegate the duties of Incident Commander to one or more such Fire Chiefs or Assistant Fire Chiefs, at his or her discretion.

i. "Mitigation" means any action designed to contain, control, stop or eliminate a release or potential release of a hazardous substance or waste or condition.

35.03 MITIGATION AND CLEANUP REQUIRED.

a. Whenever a hazardous condition is created so that a hazardous substance or waste or a constituent of a hazardous substance or waste has entered or may enter the environment, be emitted into the air, or discharged into any waters, including ground waters, the person having control over a hazardous substance shall alleviate, or cause to alleviate, the condition by cleanup or treatment, as defined by Sections 2(e) and 2(f) of this ordinance, and shall restore the affected area to its condition prior to the hazardous condition as far as practicable. The cost of cleanup or treatment shall be borne by the responsible person.

b. If the person having control over a hazardous substance cannot be located within a reasonable period of time, or if the person having control over a hazardous substance does not cause the cleanup or treatment to begin within a time reasonable in relation to the hazard and circumstances of the incident, the City of Afton may, by establishment of control of the scene of emergency by the Incident Commander and having rendered the problem as no longer an emergency, give notice to the responsible person, which shall be reasonable considering the character of the hazardous condition. The notice shall state a deadline for accomplishing the cleanup or treatment and state that the city of Afton will proceed to procure cleanup or treatment services if the cleanup or treatment is not accomplished within the deadline. The notice shall state that the person having control over a hazardous substance will be billed for all costs associated with the cleanup or treatment and that the total shall be due and payable within thirty (30) days following the receipt of the bill.

c. If the bill for the above services is not paid within thirty (30) days, City of Afton may proceed, after service of notice, either by certified mail or by one publication in a newspaper having general circulation within Union County, and hearing before the City Council, to obtain payment by all available legal means.

d. If the costs of response, mitigation, cleanup and/or treatment is beyond the capability of the city of Afton, the Incident Commander shall proceed pursuant to Section 455B.387 Subsection (2), Code of Iowa, 2005, and immediately seek any state or federal resources that may be available for such mitigation, cleanup or treatment.

e. Whenever a hazardous condition which creates an immediate danger to public health or safety exists and it is necessary to take immediate action to correct this condition in order to protect the public health or safety, the Incident Commander or any Peace Officer may, without prior notice to the responsible person, take any mitigation action necessary to limit the immediate danger to the public health or safety. The responsible person shall be liable for the cost of all such mitigation action.

35.04 LIABILITY FOR MITIGATION AND CLEANUP COSTS. The responsible person shall be strictly liable to the City of Afton and/or the fire department having jurisdiction whose personnel or equipment is involved, for all of the following:

- a. All costs relative to Section 3(b) of this Ordinance, as may be incurred by the County, any City or Fire Department.
- b. Reasonable costs incurred by the County, any City, or Fire Department, to evacuate persons from the area threatened by a hazardous condition caused by the person having control over a hazardous substance.
- c. Reasonable damages for injury to, destruction of, or loss of Afton property, including but not limited to, parks, roads and rights of way, resulting from a hazardous condition caused by the person having control over a hazardous substance, including the cost of assessing the injury, destruction or loss.
- d. The repair and/or replacement costs for all equipment, material or supplies, lost, contaminated or otherwise rendered unusable, including laboratory analytical costs, transportation costs, disposal costs; costs of repair or decontamination of equipment; medical expense, and personal injury to personnel responding to the hazardous condition; and all such other costs and expenses of the County, City or Fire Department(s) expended to deal with the hazardous condition.

35.05 NOTIFICATION.

- a. Any person, manufacturing, storing, handling, transporting, or disposing of a hazardous substance or waste shall notify the Union County Law Enforcement Center via 911 of the occurrence of a hazardous situation as soon as possible, but no later than six (6) hours after the onset or discovery of the hazardous situation. The Law Enforcement Center shall immediately notify the Fire Department having jurisdiction, the appropriate law enforcement agency, the Union County Emergency Coordinator, the operator of any threatened public or private water supply system which may be threatened and the Iowa Department of Natural Resources.
- b. Any county or municipal employee or member of a law enforcement agency, city or township fire department, or ambulance service who discovers a hazardous condition shall immediately notify the Union County Law Enforcement Communication Center Dispatcher, and upon receipt of such notification the Law Enforcement Communication Center Dispatcher shall proceed in the manner provided in Section 5(a) of this Ordinance.

35.06 SITE ACCESS. Access to any site, public or private, where a prohibited discharge, whether it is potential, occurring, or after the fact, is indicated, or suspected will be provided to the Incident Commander of the fire department, its officers and personnel, to law enforcement personnel and to the emergency coordinator for the purpose of evaluating the threat to the public, for monitoring, containment, cleanup and restoration activities.

35.07 INCIDENT COMMANDER. If the circumstance so requires, the Incident Commander may:

