

TITLE II – COMMUNITY PROTECTION  
 DIVISION 2 – ENFORCEMENT: PUBLIC OFFENSES

CHAPTER 51  
 SPILLS OF HAZARDOUS SUBSTANCES

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51.01 PURPOSE. The provisions of this chapter are intended as a supplement to and not a substitute for applicable State and federal laws and penalties for violation thereof, whether civil or criminal.

51.02 DEFINITIONS. For use in this chapter the following terms are defined as:

1. “Cleanup” means actions necessary to contain, collect, control, identify, analyze, clean up, treat, disperse, remove or dispose of a hazardous substance.
2. “Cleanup costs” means costs incurred by the City, its agents, employees, or any other person or entity participating with the approval of the City in the prevention or mitigation of damages from a hazardous condition or the cleanup of a hazardous substance involved in a hazardous condition.
3. “Corrosive” means causing or producing visible destruction or irreversible alterations in human skin tissue at the site of contact, or in the case of leakage of a hazardous substance from its packaging, causing or producing a severe destruction or erosion of other materials through chemical processes.
4. “Hazardous condition” means any situation involving the actual, imminent or probable spillage, leakage, or release of a hazardous substance onto the land, into a water of the City or into the atmosphere which creates an immediate or potential danger to the public health or safety.
5. “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, 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 substances designated under section 311 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous material designated by the Secretary of Transportation under the Hazardous Materials Transportation Act.

6. "Irritant" means a substance causing or producing dangerous or intensely irritating fumes upon contact with fire or when exposed to air.
7. "Toxic" means causing or producing a dangerous physiological, anatomical or biochemical change in a biological system.
8. "Person having control over a hazardous substance" 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 other 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.
9. "Release" means a threatened or real invasion, discharge, spillage, leakage, pumping, pouring, emptying or dumping of a hazardous substance into or onto the land, air or waters of the State unless one of the following applies:
  - A. The release is done in compliance with the conditions of a federal or State permit;
  - B. The hazardous substance is confined and expected to stay confined to property owned, leased or otherwise controlled by the person having control over the hazardous substance.
  - C. In the use of pesticides, the application is done in accordance with the product label.
10. "Water of the State" means rivers, streams, lakes and any other bodies of surface and sub-surface water lying within or forming a part of the boundaries of the State which are not entirely confined and located completely upon lands owned, leased or otherwise controlled by a single person or by two or more persons jointly or as tenants in common. "Waters of the State" includes waters of the United States lying within the State.

51.03 ENFORCEMENT. The Fire Chief shall be the responsible officer for the enforcement and administration of the provisions of this chapter, in which capacity the Fire Chief shall have the authority to call upon the assistance of other City personnel. The Fire Chief shall have authority to prepare and implement emergency evacuation plans and plans for the establishment of perimeters or boundaries at or near the site of a hazardous condition, and limit the public's right of access thereto.

51.04 NOTIFICATION OF SPILLS. A person manufacturing, storing, handling, transporting, or disposing of a hazardous substance shall notify the Mayor of a hazardous condition as soon as possible but not later than six (6) hours after the onset of the hazardous condition. The Mayor shall immediately notify the Fire Chief, the Department of Natural Resources, and the County Sheriff. If requested, a person shall submit, within thirty (30) days of the City's request, a written report of the particulars of the incident.

51.05 REMOVAL OF HAZARDOUS SUBSTANCES. When any hazardous condition exists, the Fire Chief may clean up or provide for the cleanup of the hazardous substance. Alternately, if the Fire Chief determines such cleanup will be properly and promptly accomplished by the person having control over a hazardous substance, the Fire Chief may give reasonable notice of the hazardous condition to the responsible person, and set a deadline for commencing and completing the cleanup, which deadline may be subsequently shortened or extended at the discretion of the Fire Chief. The person having control over a hazardous substance shall be responsible for all cleanup costs.

51.06 LIABILITY FOR CLEANUP COSTS. A person having control over a hazardous substance is strictly liable to the City, and to any other city or county assisting the City, incident to any hazardous condition, for all of the following:

1. The reasonable cleanup costs incurred by the City, its agents or employees, or any person or entity, city or county assisting the City as a result of the failure of the person to clean up a hazardous substance involved in a hazardous condition cause by that person.
2. The reasonable costs incurred by the City, its agents or employees or any other person or entity, city or county assisting the City, to evacuate people from the area threatened by a hazardous condition caused by the person.
3. The reasonable damages to the City, its agents or employees or any other person or entity, city or county assisting the City, for the injury to, destruction of, or loss of public property, including, but not limited to, parks, wells, sewage treatment facilities, vehicles, buildings and equipment, caused by that person, including the costs of assessing the injury, destruction or loss.
4. This shall not serve to limit or preclude the City, or any person, firm or governmental entity, from seeking to recover damages, actual or punitive, from a person having control over a hazardous substance.

51.07 LIABILITY OF PERSONS PROVIDING ASSISTANCE.

1. The City, or city or county assisting the City, and a person employed by the City or by any other city or county is not liable for damages incurred as a result of actions taken by the person when acting in the person's official capacity incident to any hazardous condition.
2. A person who provides assistance at the request of the City or by previous agreement with the City in the event of a hazardous condition is not liable in a civil action for damages as a result of that person's acts or omissions in rendering the assistance. This subsection does not relieve a person from civil damages in any of the following circumstances.
  - A. The person providing assistance is also the person having control over the hazardous substance which created the hazardous condition.

- B. The person rendered assistance for payment beyond reimbursement for out-of-pocket expenses or with the expectation of such payment.
  - C. The person providing assistance commits an act or omission which results from intentional wrongdoing or gross negligence.
3. The person provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened hazardous condition or in preventing cleanup or disposing of or in attempting to prevent, cleanup or disposal of a hazardous condition is not liable for damages resulting from the assistance or advice. This subsection 3 does not apply to a person who receives compensation other than reimbursement for out-of-pocket expenses for services in rendering the assistance or advice. The subsection 3 does not limit the liability of a person for damages resulting from the person's gross negligence or reckless, wanton or intentional misconduct.

51.08 RIGHT OF ENTRY. A person shall not refuse entry or access to or harass or obstruct an authorized representative of the City who seeks entry or access for the purpose of investigating or responding to a hazardous condition. The representative shall present appropriate credentials.