

## CHAPTER 38

### HAZARDOUS SUBSTANCES

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**38.01 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 of Guthrie Center.

**38.02 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. "Person" means individual, corporation, firm, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.
6. "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.

### 38.03 **CLEANUP REQUIRED.**

1. 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 38.02, 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.
2. 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 of Guthrie Center 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 of Guthrie Center may proceed to procure cleanup services. If the cost of the cleanup is beyond the capacity of the City of Guthrie Center to finance, the mayor or his/her designee may report to the county emergency management coordinator for assistance in seeking any state or federal funds available for such cleanup.

**38.04 LIABILITY FOR CLEANUP COSTS.** The responsible person shall be strictly liable to the City of Guthrie Center “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 local 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.

**38.05 NOTIFICATIONS.**

1. A person manufacturing, storing, handling, transporting, or disposing of a hazardous substance or waste shall notify the local 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 county emergency management office for assistance in contacting the proper state office in the manner established by the state.
2. Any employee of the City of Guthrie Center who discovers a hazardous condition shall notify the fire department. The fire chief shall notify the county emergency management office for assistance in contacting the proper state office in the manner established by the state.

**38.06 POLICE AUTHORITY.** If the circumstances reasonably so require, the local 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.

**38.07 JURISDICTION LIABILITY.** The City of Guthrie Center shall not be liable to any person for claims of damages, injuries, or losses resulting from any hazardous condition. The exception is if the City of Guthrie Center is the responsible person as defined in Section 38.02.

**38.08 PENALTY.** Any person found guilty of a violation of the provisions of this chapter shall, upon conviction, be subject to the penalty provisions 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 of Guthrie Center attorney, any violation of the provisions of this chapter may be pursued as a municipal infraction in lieu of criminal prosecution.

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