

## ORDINANCE NO. 3902

AN ORDINANCE AMENDING THE CITY OF BROKEN ARROW CODE OF ORDINANCES CHAPTER 10, FIRE PREVENTION AND PROTECTION, ARTICLE II, DIVISION I, SECTION 10-27, ENTITLED “SPECIALIZED SERVICES,” SPECIFICALLY REMOVING “HAZMAT CLEANUP;” AMENDING CHAPTER 10, FIRE PREVENTION AND PROTECTION, ARTICLE IV, ENTITLED “EXPLOSIVES,” SPECIFICALLY RESERVING SECTIONS 10-106 TO 10-120; ENACTING CHAPTER 10, FIRE PREVENTION AND PROTECTION, ARTICLE V, ENTITLED “HAZARDOUS MATERIALS INCIDENT RESPONSE;” AND REPEALING CHAPTER 13.1, ENTITLED “HAZARDOUS MATERIALS AND WASTE”

BE IT ORDIANED BY THE COUNCIL OF THE CITY OF BROKEN ARROW:

SECTION I. That Chapter 10- Fire Prevention and Protection, Article I- Generally, shall be amended as follows:

### Section 10-27. – Specialized services.

- (a) *Plan review.* The fire department shall review all plans to ensure compliance with the International Fire Code as adopted in section 10-51 of this Code. Additionally, the fire department shall review all plans pertaining to automatic fire alarm systems, and all automatic fire-extinguishing systems that are hereafter proposed for construction within the city, and shall receive a fee as set by the city manager in the manual of fees.
- ~~(b) *Hazmat cleanup.* The fire department shall receive payment from the person or entity that caused a spill of hazardous material to cover the costs of the cleanup. If the person that caused the spill is unknown or for any other reason fails to make payment, then the fee will be charged to and collected from the owner of the property on which the cleanup work was performed or the property immediately protected by the cleanup work. The fee shall be set by the city manager.~~
- (~~b~~e) *Contractor registration.* All automatic fire-extinguishing system and automatic fire alarm system contractors shall register with the city prior to performing any fire-extinguishing/alarm system work. Registration shall be in accordance with the provisions of general contractors as listed in chapter 6.
- (~~c~~d) *Restrictions on beginning work.* A permit shall be obtained prior to commencing any work on new or existing automatic fire-extinguishing or automatic fire alarm systems and all associated fees shall be paid prior to the issuance of said permit, in accordance with the manual of fees.
- (~~d~~e) *Inspections.* All required inspections shall be performed by the fire marshal or their designee and shall receive approval prior to activating an automatic fire alarm or automatic fire-extinguishing system. Fees for the inspections shall be in accordance with the manual of fees.

**SECTION II.** That Chapter 10- Fire Prevention and Protection, Article IV- Explosives, shall be amended as follows:

**Sections 10-106 to 10-120 – RESERVED.**

**SECTION III.** That Chapter 10- Fire Prevention and Protection, Article V – Hazardous Materials Incident Response shall be enacted as follows:

**Article V. – Hazardous Materials Incident Response**

**Division 1. – Generally**

**Section 10-121. - Definitions.**

The following definitions shall apply in the enforcement and interpretation of this Article, unless clearly indicated to the contrary:

*Hazardous Material* means any chemical, compound, condensate, gas, liquid, material, solid, substrate, or any other substance that, because of its chemical characteristics, concentration, quantity, physical characteristics, or other characteristics, poses a significant present or potential risk or threat to human or environmental health and safety or property when exposed or released from its container, according to federal, state, tribal, and/or local standards and regulation, including, but not limited to, the Classes and Division Examples of Materials by General Hazard Properties Based on the United Nations System. The term “Hazardous Material” may include, but is not limited to, explosives, flammable gasses, flammable liquids, noxious gasses, spontaneously combustible materials, infectious substances, corrosive materials, poisonous gasses, flammable solids, spent acids, caustic solutions, poisons, containerized gasses, sludges, radioactive material, tank bottoms containing heavy metallic ions, toxic organic or inorganic chemicals, and materials such as paper, metal, cloth or wood which are contaminated with hazardous waste.

*Hazardous Materials Clean-Up* means the operations of the Hazardous Materials Response Team in response to a Hazardous Materials Incident.

*Hazardous Materials Incident* means any incident involving the abandonment, deposit, discharge, exposure, leak, release, or spillage, whether negligently, recklessly, knowingly, or intentionally, of a Hazardous Material from its intended container, pipe, storage device, or similar retaining device, unless otherwise provided in this Article.

*Hazardous Materials Response Team* means the individual or individuals employed, contracted, or designated by the City of Broken Arrow Fire Department to respond to Hazardous Materials Incidents.

*Person* means any individual, group of individuals, corporation, sole proprietorship, partnership, limited partnership, limited liability company, firm, company, or other legal entity, foreign or domestic, engaged in any commercial, business, industrial, or personal business, transaction, or activity of any nature.

Responsible Party means any and all Persons, jointly and severally, involved in the possession, ownership, storage, or transportation of any Hazardous Materials that is abandoned, deposited, discharged, exposed, leaked, released, or spilled as described in Sec. 10-131.

#### **Section 10-122. - Nuisance Declared.**

Hazardous Materials that are abandoned, deposited, discharged, exposed, leaked, released, or spilled are hereby declared to be a nuisance due to the actual or potential deleterious effects of such Hazardous Materials upon the public, property, and environment.

#### **Section 10-123. - No waiver of rights.**

Nothing in this Article shall waive, limit, or prevent the city from exercising any right, mechanism, or recovery permitted by state or federal law, including, but not limited to, the Underground Facilities Damage Prevention Act, 63 O.S. §§ 142.1 *et seq.*, the Oklahoma Hazardous Waste Management Act, 27A O.S. §§ 2-7-101 *et seq.*, and Article 16 of the Oklahoma Public Health Code, 63 O.S. §§ 1-1601 *et seq.*

#### **Section 10-124 to 10-125. – RESERVED**

### **Division 2. – Response**

#### **Section 10-126. - Authority.**

- (a) The City Manager, or his or her designee, is hereby authorized to respond to any Hazardous Materials Incident within or outside of the City as he or she deems appropriate or as is required under state law.
- (b) The City Manager, or his or her designee, is hereby authorized to enter into and execute cooperative agreements, memorandums of understanding, memorandums of agreement, or other agreements with external entities, persons, or stakeholders as may be necessary to effectuate Hazardous Material Clean-Up and increase the City's capability and capacity in preparation for, response to, and recovery from Hazardous Materials Incidents.
- (c) Any agreement entered into or executed under the authority of this Section requiring the expenditure of city funds shall be approved by the City Council. Nothing in this Article shall abrogate any powers of the City Manager or his or her designee in the event of an emergency as provided elsewhere in this Code.

#### **Section 10-127. - Response not required.**

The City Manager, or his or her designee, shall not be obligated, by any provision of this Article, to respond to any Hazardous Materials Incident within or outside the City of Broken Arrow. This Section does not abrogate any requirement to respond to events involving releases of dangerous substances as may be required by state or federal law. No duty is created nor owed to any person by virtue of this Article, and nothing in this Article shall be construed to create nor

enlarge any duty of care owed by the City under state law, including, but not limited to, the Oklahoma Governmental Tort Claims Act.

#### **Section 10-128. - Verification of adequacy of cleanup or abatement.**

In the event any person or entity undertakes cleanup or abatement of a Hazardous Material or the effects of a Hazardous Materials Incident, the city may take such action as is necessary to supervise or verify the adequacy of the cleanup and abatement.

#### **Section 10-129 to 10-130. – RESERVED.**

### **Division 3. – Responsibility, Costs, and Waiver**

#### **Section 10-131. – Responsibility.**

The following Persons shall be liable to the City for payment of incurred costs related to the City’s response to any Hazardous Materials Incident:

- (a) The Person or Persons whose accidental, negligent, reckless, or willful act or omission proximately caused the abandonment, deposit, discharge, exposure, leak, release, or spillage of any Hazardous Material; or
- (b) The Person or Persons who owned, maintained, or had custody or control of a Hazardous Material or its container at the time of or immediately prior to the abandonment, deposit, discharge, exposure, leak, release, or spillage of such Hazardous Material; or
- (c) The Person or Persons who owned, leased, rented, or otherwise maintained control over the land, body of water, property, or location upon or within which a Hazardous Material is abandoned, deposited, discharged, exposed, leaked, released, or spilled.

#### **Section 10-132. – Costs.**

Costs incurred for Hazardous Materials Incident response shall be as set forth in the Manual of Fees adopted by the Broken Arrow City Council. Charges made shall compensate the city for equipment, personnel, labor, materials, and any other cost incurred by the city in response to a Hazardous Materials Incident. The minimum billing shall be for one hour per truck. If no cost is set forth in the Manual of Fees, the costs incurred shall be the same as is described in the Manual of Fees for the Hazardous Materials Response (plus supplies, contracted mitigation expenses, and mutual aid expenses) for Fire Runs Outside City Limits.

#### **Section 10-133. – Waiver of Costs.**

At his or her discretion, the City Manager, or his or her designee, may waive the requirement for a Responsible Party to pay incurred costs related to the City’s response to any Hazardous Materials Incident. The City Manager, or his or her designee, may consider the following factors in determining whether a Responsible Party may be required to pay incurred costs:

- (a) Whether the Responsible Party is a local government, state agency, tribal government, or federal agency or an agent, contractor, employee, or servant of a local, state, tribal, or federal government or agency;
- (b) Whether the Hazardous Materials Incident was caused by or results from acts or conditions beyond the Responsible Party's reasonable control, including:
  - (1) flood, fire, earthquake, or other natural disaster;
  - (2) war, invasion, or international hostilities;
  - (3) terrorist acts, riot, or other civil unrest;
  - (4) orders, laws, or actions of the State of Oklahoma or the United States Federal government;
  - (5) shortage of adequate power due to any of the above conditions;
  - (6) declared national or regional emergencies not otherwise described above;
  - (7) other similar event beyond the control of the Responsible party; or
- (c) Whether the contracted or entered into mutual aid agreements for Hazardous Materials Incident response and such agreement provides for mutual services without charge.
- (d) Whether the person otherwise responsible for the Hazardous Materials Incident is not involved in the possession, ownership, storage, or transportation of the Hazardous Materials as the agent, contractor, employee, or servant of any business entity or Person;
- (e) Whether the person otherwise responsible for the Hazardous Materials Incident lawfully owned, possessed, stored, or transported the Hazardous Materials abandoned, deposited, discharged, exposed, leaked, released, or spilled and such Hazardous Materials were lawfully owned, possessed, stored, or transported solely for private, non-commercial purposes related to the person's own residential, real property or private personal property, and the person received or is to receive no compensation for any services related to the Hazardous Materials; provided, however, that the Hazardous Material possessed, owned, stored, or transported by the person is in a form, quantity, and container ordinarily and lawfully available for sale as consumer products to the general public;
- (f) Whether the Hazardous Material giving rise to the Hazardous Materials Incident was used for the sole purpose of providing power to a vehicle involved in a Hazardous Materials Incident.
- (g) Whether any extenuating circumstance surrounding the Hazardous Materials Incident is sufficient to justify the waiver of payment for incurred costs.

#### **Section 10-134. – Waiver Process.**

Any Person assessed costs incurred during the City's Hazardous Materials Incident response may request a waiver of costs by submitting a written request to the Office of the City Clerk within thirty (30) days of the date of the notification of assessment or invoice, whichever occurs first. The notification of assessment or invoice must contain language advising the recipient

of the time requirements and location at which a request for waiver must be received. No waiver shall be granted after such time as the City receives payment for assessed costs. The City Manager, or his or her designee, shall determine whether to waive the assessed costs within a reasonable time after receiving a request for waiver. Any person denied an assessed costs waiver under this Article may appeal to the City Council by written notice filed with the City Clerk within fifteen (15) days of the denial; the City Council's decision shall be the final determination of the City.

**Section 10-135 to 10-140 – RESERVED.**

**SECTION IV.** That Chapter 13.1 – Hazardous Materials and Waste – is hereby REPEALED.

**~~Section 13.1-1. — Authority to order cleanup or abatement.~~**

~~The city manager, the fire chief, or a designated representative is authorized to order cleanup, or other abatement of the effects of any hazardous substance or waste which has been unlawfully, accidentally, or negligently released, or deposited upon or into any property or facility within the city and to supervise such cleanup and abatement effort. The city shall recover all costs incurred as a result of such cleanup or abatement activity from the following:~~

- ~~(1) The persons or entities whose accidental, negligent, or willful act or omission proximately caused such a release or deposit;~~
- ~~(2) The persons or entities who owned, had custody, or had control of the hazardous substance or waste at the time of such release or deposit, without regard to fault or proximate causation;~~
- ~~(3) The persons or entities who owned, had custody, or had control of the container which held such hazardous waste or substance at the time or immediately prior to such release or deposit, without regard to fault or proximate cause; and~~
- ~~(4) The property owner of the property on or in which the hazardous substance or waste was released or deposited.~~

~~Sec. 13.1-2. — Verification of adequacy of cleanup or abatement.~~

~~In the event any person undertakes to clean up or abate the effects of any hazardous substance or waste which has been negligently, unlawfully or accidentally released, or deposited upon or into any property or facility, the city may take such action as is necessary to supervise or verify the adequacy of the cleanup and abatement.~~

~~Sec. 13.1-3. — Definitions.~~

~~For the purposes of this chapter:~~

~~Costs for the cleanup and abatement of the hazardous materials and waste, shall include, but not necessarily be limited to the following:~~

- ~~(1) Costs of any emergency response contract labor and materials;~~
- ~~(2) Actual labor costs of city personnel, including benefits, supervision, workers compensation, and administrative overhead;~~
- ~~(3) Costs of security associated with the cleanup and abatement;~~
- ~~(4) Costs to the city for hazardous materials responses, including labor, equipment, and materials, from other governmental entities under mutual aid arrangements; and~~
- ~~(5) The fair rental or replacement costs of city-owned equipment and materials.~~

~~Hazardous material means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment, if released into the workplace or the environment.~~

#### **SECTION V. Repealer.**

Any ordinance or parts of ordinances found to be in conflict herewith are hereby repealed.

#### **SECTION VI. Severability.**

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

#### **SECTION VII. Effective Date.**

This ordinance shall take effect and be in full force from and after its passage and publication as required by law.

**PASSED AND APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2025.

ATTEST:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
(Seal) CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY