

## ORDINANCE NUMBER FIFTY-EIGHT REVISED

AN ORDINANCE TO PROVIDE FOR PUBLIC SAFETY AND FIRE EMERGENCY RESPONSE RECOVERY FOR THE REMOVAL AND CLEAN UP OF HAZARDOUS WASTE MATERIAL RELEASES AND; TO PROVIDE METHODS FOR THE COLLECTION OF SUCH CHARGES FOR CLEAN UP OF HAZARDOUS WASTE MATERIAL RELEASES; AND TO PROVIDE FOR OTHER AVAILABLE REMEDIES WITHIN THE CITY OF CARSON CITY, MICHIGAN.

THE CITY OF CARSON CITY ORDAINS:

### CHAPTER 58.1 ESTABLISHMENT OF ORDINANCE

58.101 Short Title. This Ordinance as Revised is hereby retitled and shall be known and cited as the "Carson City Public Safety and Fire Emergency Response Ordinance".

58.102 Purpose and Authority. The purpose of this Ordinance is:

- (1). To protect the health, safety, and general welfare of the residents of the City of Carson City by providing for the immediate removal and clean up of hazardous material releases;
- (2). To protect the residents from threats to public safety;
- (3). To remove and clean up hazardous waste material releases by parties consistent with MCL 324.20101 et. seq;
- (4). For City action to remove and clean up hazardous material releases when the responsible party fails to properly act;
- (5). To protect the City from extraordinary expenses resulting from utilization of City resources in response to certain public safety or fire emergency incidents;
- (6). For recovery of costs incurred by the City in acting to remove and clean up releases; and by pursuing other remedies consistent with Act 101 of Public Acts of 1978, other state laws, county and township ordinances;
- (7). To provide for reimbursement to the City for extraordinary costs incurred by the City for emergency services rendered by the City consistent with MCL 769.1f; and
- (6). To authorize the imposition of charges consistent with MCL 41.801 et. Seq., to recover actual other costs incurred by the City in responding to such incidents by either the City fire department, public works and/or police department for those conditions set forth and described in this Revised Ordinance.

58.103 Jurisdiction. This Revised Ordinance refers to the removal and clean up of hazardous waste material releases and the cost recovery for public removal; methods for the collection of such charges for clean up of hazardous waste and other material releases within the City of Carson City, Michigan.



**CHAPTER 58.2**  
**DEFINITIONS**

The following words and terms are defined for purposes of their use in this ordinance. Any word or term not defined in this ordinance shall be considered to be defined in accordance with its common or standard definition:

58.201 **Assessable Costs.** Means those costs for services incurred by the City in connection with a response to a public safety, public works and/or fire emergency incident, including, but not limited to, the actual labor and material costs of the City (including, without limitation, employee wages, fringe benefits, administrative overhead, costs of equipment, costs of equipment operation, costs of materials, costs of transportation, costs of material disposal and costs of contracted labor) whether or not the services are provided by the city or by a third party on behalf of the City;

1. Service charges and interest;
2. Attorneys' fees;
3. Litigation costs: and/or
4. Any costs, charges, fines or penalties to the City imposed by any court or state or federal governmental entities.

58.202 **Bomb Threats.** Means the verbal or written threat of a bomb or other explosive device which if discharged as threatened would violate a federal, state or local law.

58.203 **Emergency Assistance.** Means emergency medical, public safety, public works police, fire and/or civil defense services.

58.204 **Excessive Requests for Emergency Assistance.** Means any request for emergency assistance made to a particular location or premises if such location or premises has requested emergency assistance more than five (5) times in the preceding thirty (30) days.

58.205 **False Alarm.** Means any automated or manual device designed to request or summon emergency assistance which device is activated intentionally or otherwise, in the absence of an actual need for emergency assistance. The determination that there was no actual need for emergency assistance shall be made by the most senior person responding to a false alarm. Provided, however, a false alarm shall not be deemed to have occurred if:

1. Caused by an act of God, i.e. a lightning storm;
2. It originates from a motor vehicle alarm system or;
3. Has not occurred more frequently than three (3) times in a calendar month; and/or
4. Four (4) times in a calendar year.

58.206 **Hazardous Material Incident or Emergency.** Means any occurrence, incident, activity, accident or emergency where a release of hazardous materials occurs or is reasonably imminent and where the fire chief or his or her designee has so declared such activity, accident or emergency a hazardous material incident or emergency.



58.207 Hazardous or Toxic Materials. Means any materials which pose a substantial present or potential hazard to human life, health and safety, or the environment, including but not limited to hazardous substances as defined in Act 307 of Michigan Public Acts 1982 (being MCL 299.603), as amended, and any other substances that have been classified by the local, state or federal government or any of their departments or agencies to be hazardous or toxic.

58.208 Illegal Fire. Means a fire set or determined to have been set in violation of a federal, state, local law and/or ordinance and shall include an arson fire and a fire set in violation of a "no burning" ban or order. An illegal fire does not include an unintentional fire or fire caused by an act of God, i.e., a lighting storm.

58.209 Motor Vehicle. Means any self-propelled or towed vehicle designed or used on the public streets, roads and highways to transport passengers or property which is required to be registered for use upon such public streets, roads and highways and for the purposes hereof all trailers or appurtenances attached to any motor vehicle.

58.210 Public Safety or Fire Emergency Incident, shall mean:

1. Excessive requests for emergency assistance;
2. A false alarm;
3. A hazardous material incident or emergency;
4. An illegal fire;
5. Bomb threats;
6. Threats of harm to oneself or others;
7. A structure demolition; and/or
8. A utility line failure.

58.211 Release. Means any un-permitted spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, leaching, dumping or disposing into the environment.

58.212 Responsible Party. Means any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity that is responsible for a release of a hazardous material, either actual or threatened, or is an owner, as defined in Act 307 of Michigan Public Act 1982 (being MCL 299.603), as amended, tenant, occupant or party in control of property onto which or from which hazardous materials have been released.

58.213 Structure Demolition. Means the tearing down of a structure damaged by fire which must in the opinion of the fire chief or his or her designee be promptly demolished following the fire to protect public safety.

58.214 Threats of Harm to Oneself or Others. Means the verbal or written threat of physical harm to oneself or another or another's property which if carried out would be a violation of federal, state, local law and/or ordinance.

58.215 Utility Line Failure. Means the disabling of any transmission or service line, cable, conduit, pipeline, wire or the like used to provide, collect or transport electricity, natural gas, communication or electronic signals (including, but not limited to, telephone, computer, cable television and stereo signals or electronic impulses), water or sanitary or



storm sewage if the owner or party responsible for the maintenance of such utility line does not respond within one(1) hour to a request to repair or correct such failure.

### CHAPTER 58.3 REMOVAL OF HAZARDOUS MATERIALS

58.301 Duty to Remove. It shall be the duty of any responsible party to remove immediately hazardous materials released and undertake and complete a total cleanup of the area of the release in such a manner as to ensure that the hazardous materials are fully removed and the area is fully restored to its condition prior to the release of such hazardous materials, or to conditions or standards established by Michigan Department of Natural Resources pursuant to Act 307 of the Michigan Public Acts of 1982, as amended.

58.302 Failure to Remove, Cleanup by the City. In the event that any responsible party fails to remove immediately such hazardous material from within the City limits of Carson City, the City shall have the right to enter onto the property involved with the release and remove and conduct a cleanup of all such hazardous materials, either by City employees or by contractors and agents of the City. The City shall not be responsible for such removal outside of its jurisdiction.

58.303 Failure to Remove, Costs of Removal. Where specialized equipment or services are used for any aspect of the removal, cleanup, control or monitoring of any release or other incident involving hazardous materials, the responsible party shall be liable to the City for costs incurred in using the specialized equipment or services.

58.304 Liability for Failure to Remove. Any responsible party who fails to comply completely with Section 58.301 of this Ordinance shall be liable to the City, its agents, contractors and employees for any costs incurred in the removal and cleanup of any and all hazardous materials and the restoration of the affected property.

### CHAPTER 58.4 IMPOSITION OF CHARGES

The City Council shall promulgate a fee schedule for charges where the City Fire Department, Department of Public Works, Police Department or other parties or agencies of the City government take action in connection with a release of hazardous or toxic materials, whether in response to a call for assistance or otherwise, the actual costs incurred by the City in taking such action, and all actual costs relating thereto or arising therefrom, shall be imposed upon the responsible parties, whether jointly or severally, including but not limited to the following:

58.401 Charges for Pumper. For each pumper required, in the opinion of the officer in command, to be utilized in responding to the hazardous or toxic materials incident.





58.402 Charges for Water Tender. For each water tender required, in the opinion of the officer in command, to be utilized in responding to the hazardous or toxic materials incident.

58.403 Charges for Use of City-Owned Fire Department Vehicles. For each additional City-owned fire department vehicle required, in the opinion of the officer in command, to be utilized in responding to the hazardous or toxic materials incident.

58.404 Charges for Personnel - Related Costs. All personnel-related costs incurred by the City as a result of responding to the hazardous or toxic materials or other defined incidents. Such costs may include, but are not limited to, wages, salaries, and fringe benefits and insurance for full-time and part-time firefighters, Department of Public Works personnel and/or police officers; overtime pay and related fringe benefit costs for hourly employees and fire-run fees paid to on-call fire fighters, department of public works personnel and/or police officers. Such personnel-related charges shall commence after the first hour that the Fire Department, Department of Public Works and/or Police Department has responded to the hazardous or toxic materials or other defined incident, and shall continue until all City personnel have concluded hazardous, toxic materials or other incident-related responsibilities.

58.405 Charges for General Expenses. Other expenses incurred by the City in responding to the hazardous or toxic materials or other defined incident, including but not limited to rental or purchase of machinery, equipment, labor, consultants, legal and engineering fees, and the replacement costs related to disposable personal protective equipment, extinguishing agents, supplies, water purchased from municipal water systems and meals and refreshments for personnel while responding to the hazardous or toxic materials and/or other defined incident.

58.406 Charges Imposed by Other Governmental Entities. Charges or liability imposed upon the City for disposal of hazardous or toxic materials or other defined incident by any local, state or federal government entities related to the hazardous or toxic materials incident; so long as the City has disposed of the hazardous or toxic materials or other defined incident pursuant to federal law.

58.407 Charges for Accounting. Costs incurred in accounting for all hazardous or toxic materials or other defined incident-related expenditures, including billing and collection costs.

#### **CHAPTER 58.5 COST RECOVERY AUTHORIZATION AND BILLING PROCEDURES**

58.501 Authorization. The City may recover all assessable costs in connection with a public safety, fire emergency and/or public works incident from any or all responsible parties, jointly or severally.

58.502 Report of the City Fire Chief, Director of the Department of Public Works, or Police Chief. Following the conclusion of a hazardous or toxic materials incident fire, public works and/or public safety incident, or at any other appropriate time, the City Fire Chief,



Director of the Department of Public Works and/or the Police Chief shall submit a detailed report listing of all known costs and expenses relating to or arising out of the incident to the City Comptroller.

58.503 Determination of Total Assessable Costs. The City Administrator or his or her designee shall determine the total assessable costs and shall in consultation with other city personnel involved in responding to a public safety, public works and/or fire emergency incident determine whether to assess any, all or part of such costs against any of the responsible parties. In making such determination, the following shall be considered:

1. The total assessable costs;
2. The risk the public safety, public works, and/or fire emergency incident imposed on the city, its residents and their property;
3. Whether there was any injury or damage to person or property;
4. Whether the public safety, public works and/or fire emergency incident required evacuation;
5. The extent the public safety, public works and/or fire emergency incident required an unusual or extraordinary use of city personnel and equipment; and
6. Whether there was any damage to the environment.

58.504 Allocation of Assessable Costs. After consideration of the factors in Section 58.503, the City Administrator may allocate assessable costs among and between responsible parties, including allocating all or some of such costs jointly and severally against more than one responsible party regardless of whether a responsible party has other legal liability therefor or is legally at fault.

58.505 Liability Notwithstanding. If the City Administrator determines not to assess all or apply assessable costs against a responsible party, such determination shall not in any way limit or extinguish the liability of the responsible party to other parties.

58.506 Preparation of Invoice. Upon receipt of the City Fire Chief's, Director of Department of Public Works and/or Police Chief's Report, the City Comptroller shall prepare an itemized invoice directed to the responsible party or parties, demanding payment in full for all such costs and expenses.

58.507 Notice Period for Payment on Invoice. Such invoice shall demand such payment within 30 days of the receipt of the invoice.

58.508 Additional Costs and Expenses. Any additional costs and expenses that become known to the City Fire Chief following the transmittal of the invoice shall be billed in the same manner upon subsequent invoices to the responsible party or parties.

58.509 Charges for Failure to Pay Within Demand Period. For any such amounts that remain unpaid after 30 days from the date of any invoices, the City shall impose a late charge of one percent per month or fraction thereof, though in the discretion of the City Council, such late charge or any part thereof may be waived for good cause shown.



**CHAPTER 58.6**  
**PROCEDURE FOR APPEALING ASSESSABLE COSTS**

58.601 **Meeting With City Administrator.** Any responsible party who receives an invoice for assessable costs shall have an opportunity to meet with the City Administrator or his or her designee to request a modification of assessable costs, provided that the responsible party shall request in writing such meeting within seven (7) days of the date of the invoice assessing the assessable costs.

58.602 **Appeal to City Council.** If after meeting with the City Administrator or his or her designee the responsible party is still not satisfied, he or she may request an opportunity to appear before the City Council to further request a modification of assessable costs, utilizing the following procedure:

1. A responsible party who desires to appear before the City Council must first meet with the City Administrator or his or her designee as provided above and shall file a written request to appear before the City Council with the City Comptroller within seven (7) calendar days of the date of the meeting with the City Administrator.
2. Upon receipt of such request, the City Comptroller will place the responsible party on the agenda of the next regularly scheduled City Council meeting which meeting is at least fourteen (14) calendar days after the date on which the responsible party files the request to appear.
3. Any filed request to appear shall specifically identify and explain all reasons why the responsible party believes the assessed costs should be modified.
4. Any reason, basis or argument for modification of assessable costs not set forth in the request to appear shall be deemed waived by the responsible party.
5. Failure to timely file a written request to appear shall constitute a waiver of the responsible party's right to appear before the City Council: and shall further constitute the responsible party's agreement to pay the assessable costs invoiced.
6. After a responsible party has been given an opportunity to appear before it, the City Council shall promptly determine whether to confirm, modify or void the payment of assessable costs invoiced.

**CHAPTER 58.7**  
**REMEDIES AND LIABILITY FOR COST RECOVERY**

58.701 **Costs.** All costs incurred by the City under this Revised Ordinance shall be the responsibility of the responsible party.

58.702 **Collection of Unpaid Costs.** Assessable costs assessed against a responsible party not paid when due, including late payment fees, shall constitute a lien upon the real property of the responsible party in the city, from which, upon which or related to which the public safety or fire emergency incident occurred. Such lien shall be of the same character



and effect as the lien created by city charter for city real property taxes and shall include accrued interest and penalties. The City Comptroller shall prior to March 1 of each year, certify to the city assessor the fact that such assessable costs are delinquent and unpaid. The City Assessor shall then enter the delinquent amount on the next general ad valorem tax roll as a charge against the affected property, and the lien thereon shall be enforced in the same manner as provided and allowed by law for delinquent and unpaid real property taxes.

58.703 Civil Remedies. The City may pursue any other remedy, or may institute any appropriate action or proceedings in a court of competent jurisdiction or before any administrative agency to collect costs for which liability is imposed under this Ordinance.

58.704 Criminal Remedies. The City may commence and pursue criminal proceedings against the responsible parties as defined herein, to the extent permitted by law. The penalty for violation of this Ordinance shall, upon conviction, be a fine of up to \$500.00 or imprisonment for up to ninety days, or both such fine and imprisonment. Each day that violation of this Ordinance continues shall be a separate offense.

58.705 Recovery Under Color of Other Law. The recovery of charges composed under this Ordinance does not limit or modify liability of parties under local ordinance, state or federal law, rule or regulation.

#### **CHAPTER 58.8 SEVERABILITY**

Should any part or provision of this Ordinance be declared invalid or unenforceable by any court of competent jurisdiction, such invalid or unenforceable part or provision shall not affect the validity or enforceability of the remainder of the Ordinance, if the remainder thereof can be given effect without such part or provision thus declared to be invalid or unenforceable.

#### **CHAPTER 58.9 CONFLICTING ORDINANCES AND AMENDMENTS SUPERSEDED**

Any City ordinance and/or amendments thereto or resolutions that are in conflict or parts thereof which conflict with any terms of this ordinance are hereby rescinded. In case of conflict between this ordinance and any such ordinances or resolutions, this ordinance shall control. The catch line headings which proceed each section or subsection of the ordinance are for convenience and reference only and shall not be taken into consideration any construction or interpretation of any of the provisions of this ordinance.





**CHAPTER 58.10**  
**EFFECTIVE DATE**

This Ordinance shall become effective 30 days after publication of the Ordinance or 30 days after publication of a summary of its provisions in a local newspaper of general circulation.

**CHAPTER 58.11**  
**PUBLICATION**

This Ordinance was published in the Carson City Gazette on December 13, 2010 pursuant to section 14.2(b) of the Charter of the City of Carson City.

**CERTIFICATION**

We the undersigned, as Mayor and City Comptroller of the City of Carson City, Michigan, do hereby certify that this Ordinance Number Fifty-Eight Revised of the City of Carson City, was introduced at a regular meeting of the City Council held on October 19, 2010, and was thereafter adopted at a regular meeting on November 23, 2010, by a vote of Six (6) Ayes; Zero (0) Nays; Zero (0) Abstaining; and Zero (0) being absent.

  
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Bruce Tasker, Mayor

  
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Bonnie Schaffer, City Comptroller

