

TOWN OF WEATHERSFIELD, VERMONT

Hazardous Materials Response Ordinance

1. AUTHORITY
2. PURPOSE OF ORDINANCE
3. APPLICATION
4. DEFINITIONS
5. DUTIES
6. HAZARDOUS MATERIALS CONTROL, CONTAINMENT, AND CLEAN UP
7. COSTS
8. USE OF FEES COLLECTED
9. ENFORCEMENT
10. INCONSISTENT ORDINANCES REPEALED
11. SEVERABILITY
12. EFFECT

1. AUTHORITY

This Ordinance is adopted in accordance with the provisions of Title 12, Section 5783, Title 20, Section 2673, and Title 24, Chapter 59, of the Vermont Statutes Annotated.

2. PURPOSE OF ORDINANCE

- (a) It is the purpose of this Ordinance to provide for the orderly and expeditious control and clean up of any hazardous materials which may escape from the control of the person or persons having possession of them, which thereby may pose a threat to the residents, taxpayers, and visitors in the Town of Weathersfield.
- (b) This Ordinance requires that any person in possession of such hazardous materials shall pay for all services provided by the Town, its officers, departments, agents, or employees, to control and clean up said materials, and to require that the Town be reimbursed for any costs or damages, direct or indirect, incurred as a result of its efforts to contain, control, clean up, or otherwise abate such hazardous materials incidents.
- (c) It is not the purpose of this Ordinance to impose upon the Town, its officers, departments, agents, or employees, any obligation to secure or remove any hazardous materials from the Town of Weathersfield once safe containment of the hazardous materials is made. Moreover, nothing in this Ordinance shall relieve any person or persons in possession of hazardous materials of any obligation imposed by Federal or State laws, and specifically nothing contained herein shall be deemed to permit the possession, storage, or use of hazardous materials, except in conformance with all applicable Federal, State, and local laws and regulations.

TOWN OF WEATHERSFIELD, VERMONT

Hazardous Materials Response Ordinance

3. APPLICATION

This Ordinance shall apply to all incidents involving hazardous materials within the boundaries of the Town of Weathersfield, and to any person or persons who may possess such materials found within the boundaries of the Town, except as such prevailing Federal or State laws or regulations may take precedence over such person or persons.

4. DEFINITIONS

For the purposes of this Ordinance, the following terms shall have the meanings stated:

- (a) "Hazardous Materials" shall mean those substances, materials, or agents in such quantity, state, and form as may constitute a potential risk to the health and safety of the people and environment of the Town, and which may constitute a threat to property, including, without limitation, the following: explosives; radiative materials, etiologic agents, flammable materials, combustible materials, poisons, oxidizing or corrosive materials, and compressed gases. This shall also include any other materials listed as 'hazardous' by the Materials Transportation Bureau of the United States Department of Transportation, in Title 49 of the Code of Federal Regulations, as amended, or those materials regulated pursuant to Title 10, Chapter 47, of the Vermont Statutes Annotated, or any other applicable Federal or State regulations;
- (b) "Person" shall mean any individual, corporation, or other entity having the recognized legal status of a person, i.e. association, or any partnership, trust, or other legal entity as distinguished from the individual members thereof;
- (c) "Person in possession" shall include not only the owner, but any agent, consignee, employee, contractor, or representative within a chain of control;
- (d) "Possession" shall mean to possess, own, hold, or having within his, her, or its control any material defined as a hazardous material. In the case of any corporation or other legal entity, in addition to the entity itself, its officers, directors, or other natural persons having legal responsibility for the control of said entity shall be deemed to be in possession. It is the intention of this Ordinance to include with the concept of person in possession not only the legal owner, but also any and all other persons who may, at any time, come within the chain of control, without regard to the issue of legal title.

TOWN OF WEATHERSFIELD, VERMONT

Hazardous Materials Response Ordinance

5. DUTIES

- (a) The person or persons in possession of any hazardous material(s) shall have the duty to prevent its accidental or intentional discharge or release, and to ensure that any such material(s) is used in a manner which will prevent its escape from safe containment.
- (b) No person in possession shall dump, deposit, release, or dispose, or cause to have dumped, deposited, releases, or disposed, any hazardous material(s) within the Town of Weathersfield.
- (c) In the event of the discharge or release of any hazardous material(s) from safe containment, the person in possession at the time of the discharge shall immediately report the incident to the Chief Engineer of either the Ascutney Volunteer Fire Department or the West Weathersfield Volunteer Fire Department, as applicable based upon the geographic location of the event.

6. HAZARDOUS MATERIALS CONTROL, CONTAINMENT, AND CLEAN UP

- (a) The Fire Department shall be notified promptly of such reported incident, and shall take any and all actions as is necessary to protect the public health, safety, property, and the environment.
- (b) The primary goals of the Fire Department shall be to bring the hazardous material(s) under control in safe containment, and to minimize the damage caused by said material(s).

7. COSTS

- (a) Annually, by May 1st of each year, the Weathersfield Fire Commission shall present to the Select Board proposed response fees for the following fiscal year.
- (b) Costs shall include, but not be limited to, an initial response fee, charges for labor, apparatus use, materials use, medical expenses, equipment damage or replacement, and any and all other incidental costs.
- (c) Annually, by June 1st of each year, the Select Board shall adopt response fees for the following fiscal year. If either the Commission fails to recommend, or the Board fails to adopt a new fee schedule, the fees previously adopted shall remain in effect.

TOWN OF WEATHERSFIELD, VERMONT

Hazardous Materials Response Ordinance

- (d) Based upon the adopted fee schedule, the person, or persons, in possession of any hazardous material(s) shall pay a minimum response fee and, in addition, shall be strictly liable to the Town of Weathersfield for all costs incurred by the Town, its officers, departments, agents, or employees for the control, containment, and clean up of the hazardous materials which may have been discharged or released.
- (e) If such material was possessed by more than one (1) person, then all shall be jointly and severally liable, and the costs incurred by the Town, its officers, departments, agents, or employees may be recovered from any one (1) of them, by action brought in any court of competent jurisdiction.

8. USE OF FEES COLLECTED

All costs and fees collected under the Ordinance shall be deposited in the following manner:

- 1. The response fee for use of apparatus owned by the Town shall be deposited to a capital reserve fund, to be held by the Town of Weathersfield, to fund payments for fire apparatus.
- 2. All fees collected for labor, apparatus use, materials use, medical expenses, equipment damage or replacement, and any and all other incidental costs shall be returned to the appropriate fire department.

9. ENFORCEMENT

- 1. This Ordinance is designated as a Civil Ordinance, pursuant to 24 V.S.A. 1971 (b).
- 2. This Ordinance may be enforced by the Chief Engineer, or his/her designee, of the respective Fire Department.
- 3. Prosecution of any violation of this Ordinance shall be undertaken by either the enforcement officer, or a representative designated by the Town of Weathersfield in a court of competent jurisdiction.

10. INCONSISTENT ORDINANCES REPEALED

Any provisions of any Ordinance of the Town of Weathersfield in effect at the time of enactment of this Ordinance governing any activity included in this Ordinance is hereby revoked.

TOWN OF WEATHERSFIELD, VERMONT

Hazardous Materials Response Ordinance

11. SEVERABILITY

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

The Select Board hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional or ineffective.

12. EFFECT

No section of this Ordinance shall be construed to supersede or replace any Vermont statute.

This Ordinance shall be entered in the minutes of the Select Board's meeting, and posted in at least five (5) conspicuous places with the Town of Weathersfield and published in a newspaper circulating in the Town on a day not more than fourteen (14) days following the date when the Ordinance is adopted.

This Ordinance will become effective on the twentieth day of April, 2001, sixty (60) days after the date of its adoption by the Select Board, unless a petition is filed with the Town Clerk by the fourth day of April, 2001, forty-four (44) days after the date of its adoption. The petition should be addressed to the Select Board, should be signed by at least five per cent (5%) of the qualified voters of this municipality, and should ask for a special meeting to be called on the question of disapproving the Ordinance. Questions about the Ordinance may be directed to the Municipal Offices, Weathersfield, Vermont, or by calling telephone number (802) 674-2626.

The foregoing Ordinance is hereby adopted by the Select Board of the Town of Weathersfield, Vermont, this nineteenth day of February, 2001.

Richard A. Ballantine, Chairman

Randy S. Brown

Frederick W. Crowley

C. Peter Cole

Patricia W. Daniels