

CITY OF CUSHING
ORDINANCE NO. __-__-12-__

AN ORDINANCE REQUIRING REMEDIATION OF REAL PROPERTY CONTAMINATED BY METHAMPHETAMINE AND OTHER NOXIOUS, HAZARDOUS OR TOXIC SUBSTANCES ACTIVITY; SETTING FORTH PURPOSE AND INTENT; CONTAINING DEFINITIONS; REQUIRING OWNERS TO REPORT ACTIVITY; PROHIBITING OCCUPANCY OF PROPERTY UNTIL REMEDIATION IS COMPLETE; REQUIRING NOTICE OF CONTAMINATION TO THE PUBLIC; REQUIRING ASSESSMENT; ESTABLISHING ACCEPTABLE STANDARDS OF CONTAMINATION AND CLEANUP STANDARDS; REQUIRING FINAL REPORT; PROVIDING FOR PENALTY FOR VIOLATIONS; PROVIDING FOR SEVERABILITY; AND, DECLARING AN EMERGENCY.

WHEREAS, activities involving the manufacture and possession of methamphetamine and other noxious, hazardous or toxic substances within the city limits of City of Cushing create public health and safety risks for current and future occupants of the property, adjoining properties and the public at large; and,

WHEREAS, requiring property owners to remediate and remove such risks is in the best interest of occupants, adjoining properties and the citizens of City of Cushing.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF CUSHING, OKLAHOMA, AS FOLLOWS:

Section 1: Purpose and Intent.

The purpose of this ordinance is to protect occupants of real property, as well as occupants of adjoining properties and the public at large, from hazardous and contaminated living environments by requiring owners of real property to remediate contamination of property caused by methamphetamine activity, or activities involving other noxious, hazardous and toxic substances, prior to resumed occupancy.

Section 2: Definitions: For purposes of this Chapter, the following definitions shall apply:

a. "Activity" or "activities" shall include the manufacture and possession of methamphetamine and other noxious, hazardous or toxic substances; or other acts involving such substances that present public health and safety risks to current or future occupants of real property, adjacent properties or the public at large.

b. "Property" or "real property" shall include land, buildings, or other residential or commercial structures and facilities designed for human occupancy that are owned by an individual, firm, corporation or entity, and that are contaminated by activity or activities.

Section 3: Reports of Methamphetamine or Other Noxious, Hazardous and Toxic Substance Activity.

Upon discovery that an owner's property is, or has been, the location for any type of methamphetamine or other noxious, hazardous or toxic substance activity, an owner shall immediately report such activity to the Cushing Police Department.

Section 4: Prohibition of Occupancy.

Until a contractor experienced in hazardous waste removal and remediation, as prescribed herein, assesses the contaminated property, cleans up any contamination and prepares a Final Report which shows that the levels of contamination upon the property meets the acceptable levels listed in Section 7, occupation of the property for human habitation is prohibited.

Section 5: Notice of Contamination.

(a) Upon notice that contamination has occurred due to activity, the Code Enforcement Officer shall affix upon the property a "Notice of Contamination" containing the following information:

- (1) The word "WARNING" in bold type.
- (2) The address of the contaminated property or, if the property has multiple structures or dwelling units upon it, the address of each contaminated dwelling unit.
- (3) A statement that: "Hazardous substances, toxic chemicals, or other waste products may be present on the property."
- (4) A warning that: "Any person who enters the structure(s) without permission of the owner or the Cushing Police Department will have committed a trespass."

(b) Upon becoming so informed, the Code Enforcement Office shall notify the City Utility Office of such contamination. The City Utility Office shall not provide utilities to such property(s) until further notice from the Code Enforcement Office.

(c) It shall be unlawful for any person, including the property owner, property manager or occupant, to remove such Notice of Contamination while the property is deemed to be in a contaminated condition. Such Notice shall only be removed by the Code Enforcement Officer upon completion of remediation.

Section 6. Assessment and Remediation.

(a) Upon discovery that property is or has been the location for any type of activity or activities, the owner, prior to any resumed occupancy of the property and after the removal of such manufacturing or processing equipment or materials shall retain the services of a contractor who is experienced in hazardous waste removal and remediation to assess the level of contamination within the property and provide a written report documenting the level of contamination. At a minimum, such contractor shall have completed forty (40) hours of Hazardous Waste Operation and Emergency Response training pursuant to 29 C.F.R. 1910.120, or subsequent regulations thereof, and shall have received certification pursuant to this training. The owner shall obtain a copy of the contractor's 29 C.F.R. 1910.120 certification before allowing the contractor to begin the assessment.

(b) If, upon the completion of the assessment, the contractor determines:

(1) The level of contamination does not exceed the acceptable contamination levels, as defined in Section 7, the owner shall require the contractor to prepare a Final Report as prescribed in Section 9. Once the Final Report is prepared and delivered to the owner, the owner shall deliver a copy of the Final Report to the Code Enforcement Officer. The Code Enforcement Officer shall remove the Notice of Contamination, authorize the owner in writing that occupancy may resume, and notify the City Utility Office that it may resume utility service to such property.

(2) If the level of contamination exceeds the acceptable levels defined in Section 7, the owner shall not allow occupancy of the property for human habitation until an approved contractor has:

(a) Cleaned up any contamination and remediated the property according to the standards of Section 7; and,

- (b) Conducted another assessment which shows that contamination levels are acceptable pursuant to Section 7.
- (3) Once the level of contamination meets the acceptable standards defined in Section 7, then the owner shall require the contractor to prepare a Final Report prescribed in Section 9. Once the Final Report is prepared and delivered to the owner, the owner shall deliver a copy to the Code Enforcement Officer. The Code Enforcement Officer shall remove the Notice of Contamination and authorize the owner in writing that occupancy may resume. The Code Enforcement Office shall also notify the City Utility Office that it may resume utility service to such property.

Section 7. Acceptable Levels of Contamination.

The owner shall require the certified contractor to test the levels of volatile organic compounds (VOCs), pH, Mercury, Lead, and Methamphetamine in both the initial assessment and the post-remediation assessment. Acceptable levels for each are the following:

- (a) VOCs: 0.9 parts per million or below.
- (b) pH: Surface level of 7 or below.
- (c) Mercury: 0.3 microgram per cubic meter of mercury in air or below.
- (d) Lead: 20 micrograms per square foot or below.
- (e) Methamphetamine: 0.1 microgram per one hundred square centimeters or below.

Section 8. Cleanup and Safety Standards.

Contractors hired by an owner to engage in removal and remediation shall conduct assessments and cleanup pursuant to the relevant standards and guidelines proposed or adopted by the Oklahoma Drug Enforcement Agency, the Federal Drug Enforcement Agency, the Oklahoma Department of Environmental Quality, and the Environmental Protection Agency, and shall follow safety procedures mandated by the relevant federal and state agencies governing hazardous waste.

Section 9. Final Report.

(a) All inspections and assessments conducted by a contractor during the removal and remediation process shall be fully documented in writing. The report shall include the dates that actions were performed and the names and signatures of the people

and/or companies who performed the actions. The Final Report shall include any other types of relevant documents, including but not limited to photographs, video recordings, drawings, and charts. Such additional documentation shall likewise be signed and dated. The owner shall immediately provide a copy of the Final Report to the City's Code Enforcement Officer upon receipt from the contractor. The Final Report, at a minimum, shall include:

- (1) A case narrative, site description, and site assessment.
- (2) Physical address of property, number and type of structures or dwelling units on the property, and a description of adjacent and/or surrounding properties.
- (3) Law enforcement reports, documented observations, and pre-remediation sampling results that provide information regarding the manufacturing or processing method, chemicals present, manufacturing or processing areas, chemical storage areas, and observed areas of contamination or waste disposal.
- (4) Name of cleanup contractor(s) and the contractor's qualifications, experience, and copy(s) of any certification(s); and,
- (5) The signature of the contractor who prepared the report.
- (6) A copy of the contractor's 29 C.F.R. 1910.120 certification.

(b) Where property is remediated, a Final Report shall also include:

- (1) Worker safety and health information.
- (2) Decontamination and Encapsulation: Procedures for each area that was decontaminated.
- (3) Documentation that the structure was cleaned to acceptable levels, including, but not limited to, the location and results of post-decontamination samples, descriptions of analytical methods used, and the location(s) of laboratory(s) used.

Section 10. Penalty.

(a) Any person, firm or corporation violating any of the provisions of this ordinance shall be guilty of an offense and, upon conviction thereof, shall be punished as provided in Section 1-8 of the Cushing City Code.

(b) Each day a violation occurs shall constitute a separate offense.

(c) The provisions of this ordinance shall not preclude the City of Cushing or any other aggrieved party from pursuing any civil remedies to recover any and all costs associated with administration or enforcement of this ordinance.

Section 11. Severability. Severability is intended throughout and within the provisions of the ordinance. If any provision, including any exception, part, phrase, or term, or the application thereof to any persons or circumstances is held invalid, the application to other persons or circumstances shall not be affected thereby and the validity of the ordinance in any and all other respects shall not be affected thereby

Section 12. Declaration of Emergency. That for the preservation of the public health, peace and safety, an emergency is hereby declared to exist by reason whereof this ordinance shall be in full force and effect from and after its passage, approval and publication.

PASSED, APPROVED, AND ADOPTED this ____ day of _____, 2012.

Evert Rossiter, Chairman
Board of Commissioners

ATTEST:

Cindy G. Manning, City Clerk

Approved as to Form and Legality:

J. Stewart Arthurs, City Attorney