

FILED FOR RECORD
R. B. SHORE

ORDINANCE 08-023

2008 FEB 28 PM 12:48

CLERK OF THE CIRCUIT COURT
MANATEE CO. FLORIDA

AN ORDINANCE OF MANATEE COUNTY, FLORIDA, CREATING AND ADDING PART I, CHAPTER 1-7, OF THE MANATEE COUNTY CODE OF ORDINANCES, ENTITLED THE COST RECOVERY FOR HAZARDOUS MATERIAL INCIDENTS ORDINANCE; PROVIDING FOR COST RECOVERY FOR RESPONSE AND RECOVERY EFFORTS RELATED TO HAZARDOUS MATERIALS INCIDENTS; PROVIDING FOR A TITLE; PROVIDING FOR INTENT, PURPOSE, AUTHORITY AND JURISDICTION; PROVIDING DEFINITIONS; PROVIDING FOR LIABILITY FOR COSTS; PROVIDING FOR COLLECTION AND DISBURSEMENT OF FUNDS FOR COST RECOVERY; PROVIDING FOR METHODS OF ENFORCEMENT; PROVIDING FOR CONFLICT WITH OTHER LAWS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

2008 FEB 18 AM 11:46
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

FILED

WHEREAS, the health, safety, and welfare of its citizens is a responsibility of Manatee County; and

WHEREAS, Manatee County may incur costs for emergency and post-emergency response activities resulting from a hazardous materials incident which is not included in the appropriate budgets or reserves of the County; and

WHEREAS, in connection with emergency management of hazardous materials, Manatee County has determined that it is necessary and proper and in the public interest to provide for non-traditional emergency services when not otherwise provided; and

WHEREAS, it is the desire of Manatee County that the persons responsible for causing the hazardous material incident shall reimburse Manatee County for its expenses associated with

these costs deemed reasonable and necessary to protect the public's health and safety that are incurred by Manatee County during the emergency and post-emergency phase of a hazardous material incident; and

WHEREAS, Manatee County recognizes that cleanup, abatement, and remediation of contamination resulting from hazardous incidents are activities regulated by state and federal law but those regulations may not compensate the County for its expenses incurred in such incidents and response; and

WHEREAS, Manatee County has the authority and power to regulate pursuant to the Florida Constitution and Chapters 125 and 252, Florida Statutes.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA:

Sec. 1-7-1. Title.

This ordinance shall be known as the "Cost Recovery for Hazardous Material Incident Ordinance."

Sec. 1-7-2. Intent and purpose.

This ordinance is intended to provide for recovery by Manatee County, a political subdivision of the State of Florida, its officials, employees or agents, of unbudgeted costs incurred in response and recovery efforts related to hazardous material incidents. In addition, it is intended to provide for cost recovery for damages to natural resources, and government owned properties.

Sec. 1-7-3. Authority.

The County Board of County Commissioners has the authority to adopt this ordinance pursuant to the provision of Chapters 125 and 252, Florida Statutes.

Sec. 1-7-4. Jurisdiction.

This ordinance shall apply to all areas of Manatee County, Florida.

Sec. 1-7-5. Definitions.

As used in this ordinance, the following words and phrases shall have the meaning indicated unless the context otherwise requires:

Cost(s) means and includes, but is not limited to those expenses that are extraordinary in nature, including those for which funds are not provided for in the Manatee County or Manatee County Fire Districts' annual budgets including:

- (1) All costs incurred for response, containment and/or removal and disposal of hazardous materials or remedial actions, to include costs associated with transportation and temporary storage of hazardous materials.
- (2) All costs incurred for ensuring the safety of the public, to include costs incurred for actions taken on and off the site of the hazardous material incident.
- (3) Damages for injury to, destruction of, or loss of natural resources, as determined by an appropriate local, state or federal agency, including the reasonable costs of assessing such injury, destruction, or loss resulting from a hazardous material incident.

- (4) Health care costs for persons or animals injured from a hazardous material incident or costs of any health assessment or health effects study carried out as a necessity resulting from a hazardous material incident.
- (5) The costs of operating, maintaining, leasing, repairing and replacing equipment incurred in response and recovery efforts related to a hazardous materials incident.
- (6) Expenses of contract labor and equipment incurred in response and recovery efforts related to a hazardous materials incident.
- (7) Expenses of labor and equipment obtained by Manatee County, Manatee County Fire Districts, Manatee County agencies or agents incurred in response and recovery efforts related to a hazardous materials incident.
- (8) Expenses of materials, including but not limited to, absorbents, foams, dispersants, neutralization agents, overpack drums or containers incurred in response and recovery efforts related to a hazardous materials incident.
- (9) Expenses of supervision of cleanup and abatement incurred in response and recovery efforts related to a hazardous materials incident.

Hazardous material means any substance or material defined, listed, characterized, or classified as a hazardous material, hazardous substance, hazardous waste, or toxic substance according to any or all of the following: Title 40 Code of Federal Regulations, Chapter 1, Subchapter I, Part 261 (Identification and Listing of Hazardous Wastes); Title 40 Code of Federal Regulations, Chapter 1, Subchapter J, Part 302, §302.4, (Designation of Hazard Substances); Title 40 Code of Federal Regulations, Chapter 1, Subchapter J, Part 355, Appendices A and B (List of Extremely

Hazardous Substances), and Title 49 Code of Federal Regulations, Subchapter C, Part 172, Subpart B, §§ 172.101 and 172.102 (Hazardous Materials Table); or Florida Statute 252.82(5).

Hazardous material incident means actual or threatened release of hazardous substances or material, including hazardous waste, which poses an imminent threat to the environment, and to health, safety or welfare of the population.

Hazardous substance includes any solution, mixture, or formulation containing hazardous material, or any material which, due to its chemical or physical characteristics, is determined by the county to pose a substantial threat to the life, health, or safety of persons or property or to the environment. The term includes, but is not limited to, explosives, radioactive materials, petroleum products, gases, poisons, biologic agents, flammables and corrosives.

Natural resources means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by Manatee County.

Person means an individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, governmental entity, or any other legal entity.

Recovery means restoration to pre-event conditions.

Release means the accidental or intentional, sudden or gradual spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing

into the environment (including the abandonment or discarding of barrels, containers and other receptacles containing any hazardous material or substance or waste or pollutant or contaminant).

Response means the provision of emergency and nonemergency assistance during and following an incident and to reduce the likelihood of secondary damage.

Responsible party means the person(s) whose act or omission caused a release; or, the person(s) who owned or had custody or control of the hazardous substance or waste at the time of such release without regard to fault or proximate cause; or, the person or persons who owned or had custody or control of the container which held the hazardous substance at the time or immediately prior to such release without regard to fault or proximate cause.

Sec. 1-7-6. Hazardous materials incidents--Liability for costs.

(a) *Liability for costs.* Any responsible party who causes a hazardous material incident shall be liable for the payment of all reasonable and necessary extraordinary and unbudgeted costs incurred by the county, fire districts, county agencies or agents, for response to and remediation of such an incident.

(b) *Remedies at law.* The county will seek all available remedies at law, to include the provisions of this ordinance, against any parties responsible for any hazardous materials event, to include those actions and remedies available under the U.S. Bankruptcy Code relating to such matters.

Sec. 1-7-7. Collection and disbursement of funds for cost recovery.

(a) *Agent for collection.* The Public Safety Department, or other department or person designated by the County Administrator, shall serve as the county's agent for collecting invoices and billing the responsible party for costs in the unincorporated area. Agencies of the county and agencies responding to a hazardous material incident in the county according to the responsibilities set forth in the Comprehensive Emergency Management Plan (RS F-10 Hazardous Materials Response) [as Amended] or at the request of the county are eligible to submit bills.

(b) *Procedure for submitting invoices.* An invoice identifying eligible costs under this ordinance shall be submitted to the Public Safety Department, or other department or person designated by the County Administrator, within a reasonable time after the cost was incurred or identified. Submitted invoices must include sufficient documentation for cost reimbursement (e.g. copies of time sheets for specific personnel, copies of bills for materials, equipment and supplies procured or used, etc.). Accepting invoices from agencies other than the County for collection by the County, shall not incur liability to the County to reimburse invoiced costs from such agencies until payment is received by the County from the responsible party. Provided that in no event shall the County have a legal obligation to collect or undertake collection efforts on behalf of any other entity.

(c) *Method of payment.* The County Public Safety Department, or other department or person designated by the County Administrator, shall prepare and submit one or a series of consolidated invoices to the responsible party identifying agencies, agents and their specific costs or reimbursements. The responsible party shall issue a certified check made payable to the county

or governmental entity that responded and submitted an invoice. The final payment will be made to Manatee County within 60 days of receiving a consolidated invoice. The collected funds shall be deposited with the Clerk of the Court. The Public Safety Department, or the department or person designated by the County Administrator, shall prepare audit slips to each responding agency for disbursement of funds collected on their behalf by the Clerk of the Court.

Sec. 1-7-8. Methods of enforcement.

(a) *Civil action.* The County may enforce these provisions by civil action in a court of competent jurisdiction for the collection of any amounts due hereunder plus administrative collection costs, or for any other relief that may be appropriate. A certified copy of a judgment in favor of the County may be recorded in the public records and thereafter shall constitute a lien upon any real or personal property owned by such person(s) in accordance with law.

(b) *Other remedies.* This ordinance shall not prohibit the County from pursuing any other remedy, whether civil or criminal, or from instituting any appropriate action or proceedings, including injunction in a court of competent jurisdiction. Nor shall the recovery of expenses under this ordinance in any way release the various parties, or limit them beyond acknowledgment of receipt of funds recovered, from other legal liability incurred as a result of hazardous material cleanup or abatement as defined under any local, state or federal rule or regulation.

Sec. 1-7-9. Conflict with other laws.

This ordinance shall not restrict or replace cost recovery from funding sources available under State and Federal regulations including but not limited to the revolving fund established under

section 311(K) of the Federal Water Pollution Trust Fund established under Comprehensive Environmental Response, Compensation and Liability Act (42 USC 9611); the Hazardous Materials Administration Trust Fund established under F.S. ch. 252, and the Florida Coastal Protection Trust Fund established under F.S. ch. 376.

Sec. 1-7-10. Severability.

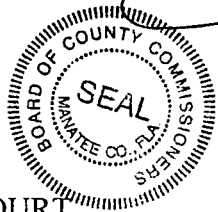
If any section, subsection, sentence, clause, or other provision of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be so construed as to render invalid or unconstitutional the remaining sections, sentences, clauses or provisions of this Ordinance.

Sec. 1-7-11. Effective Date.

This Ordinance shall become effective on the filing of a copy of this Ordinance with the Secretary of State.

PASSED AND DULY ADOPTED in open session, with a quorum present and voting, this 12 day of February, 2008.

BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA



By Jane von Hahmann
JANE von HAHMANN, Chairperson

Attest:
R.B. SHORE
CLERK OF CIRCUIT COURT

By: Ausana P. Romine



STATE OF FLORIDA, COUNTY OF MANATEE
This is to certify that the foregoing is a true and correct copy of the documents on file in my office.
Witness my hand and official seal this 13th day of February, 2008.
R.B. SHORE
Clerk of Circuit Court
By: Diann E. Volmer, D.C.



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R. B. SHORE

2008 FEB 28 PM 12:48

FLORIDA DEPARTMENT of STATE

CHARLIE CRIST
Governor

STATE LIBRARY AND ARCHIVES OF FLORIDA

CLERK OF THE CIRCUIT COURT
MANATEE CO. FLORIDA
KURT S. BROWNING
Secretary of State

February 21, 2008

Honorable R. B. "Chips" Shore
Clerk of Circuit Court
Manatee County
Post Office Box 25400
Bradenton, Florida 34206

Attention: Quantana Acevedo, Deputy Clerk

Dear Mr. Shore:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letters dated February 13, 2008 and certified copies of Manatee County Ordinance Nos. PDR-04-46(P)(R), PDR-05-17(P)(R), and 08-23, which were filed in this office on February 18, 2008.

As requested, one date stamped copy of each is being returned for your records.

Sincerely,

Liz Cloud
Program Administrator

LC/jru
Enclosure

DIRECTOR'S OFFICE

R.A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250
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