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MEMORANDUM

Office of the City Attorney

Phone: 334-5011/Fax 334-2229
Box 46

TO: Mayor and City Commission

DATE: June 28, 1999

FROM: City Attorney

FIRST READING

SUBJECT: Ordinance No. 0-99-21

An ordinance of the City of Gainesville, Florida, creating and adding Article III of Chapter 11.5 of the Gainesville Code of Ordinances entitled Hazardous Material Incident Cost Recovery; providing the City of Gainesville with the power and authority to recover from the Responsible Party, the costs and related expenses incurred by the City and other agencies or organizations when responding to a hazardous materials incident; providing for hazardous material cost recovery; providing for authority; providing for intent and purpose; providing for rules of construction; providing for definitions; providing for hazardous materials incidents - liability for costs; providing for collection and disbursement of funds for cost recovery; providing for verification and supervision; providing for conflict with other laws; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

Recommendation: The City Commission adopt the proposed ordinance.

At its meeting on November 9, 1998, the City Commission authorized the City Attorney to draft and the Clerk of the Commission to advertise an ordinance creating Article III of Chapter 11.5 to provide for recovery by the City of Gainesville of costs incurred in the response and recovery efforts related to hazardous material incidents. This ordinance also provides for recovery of costs incurred by entities other than the City of Gainesville which are requested by the City to assist during a hazardous material incident, and for cost recovery for damages to natural resources and government-owned properties.

Prepared by:

Ronald D. Combs
Sr. Asst. City Attorney

Approved and Submitted by:

Marion J. Backson
City Attorney

Ordinance No. _____
0-99-21

An ordinance of the City of Gainesville, Florida, creating and adding Article III of Chapter 11.5 of the Gainesville Code of Ordinances entitled Hazardous Material Incident Cost Recovery; providing the City of Gainesville with the power and authority to recover from the Responsible Party, the costs and related expenses incurred by the City and other agencies or organizations when responding to a hazardous materials incident; providing for hazardous material cost recovery; providing for authority; providing for intent and purpose; providing for rules of construction; providing for definitions; providing for hazardous materials incidents – liability for costs; providing for collection and disbursement of funds for cost recovery; providing for verification and supervision; providing for conflict with other laws; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

WHEREAS, at least 10 days notice has been given once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of a Public Hearing in the City Commission Auditorium in City Hall, City of Gainesville; and

WHEREAS, a Public Hearing was held pursuant to the published notice described at which hearing the parties in interest and all others had an opportunity to be and were, in fact, heard;

WHEREAS, the City Commission of the City of Gainesville finds and declares that “hazardous materials,” as defined herein discharged from their designated containment or transport systems into the environment under uncontrolled conditions can threaten the health, safety, and welfare of the people, damage or destroy property, and degrade the quality of the environment; and

1 WHEREAS, the City Commission has determined that prompt response to and abatement
2 of uncontrolled hazardous materials discharges is vital to the protection of people, property, and
3 the environment; and

4 WHEREAS, the City Commission has determined that response to hazardous materials
5 emergencies requires:

- 6 (1) the use of proper equipment and supplies,
- 7 (2) the repair or replacement of such equipment and supplies,
- 8 (3) extensive decontamination of reusable equipment or supplies,
- 9 (4) disposal of wastes generated during the incident,
- 10 (5) deployment of personnel, and

11 WHEREAS, the City Commission has determined, subject to the provisions contained
12 herein, that the reimbursement for the cost of such equipment, supplies, decontamination and/or
13 waste disposal from the producer, manufacturer, transporter, warehouse, wholesaler, retailer,
14 disposer, and/or consumer of hazardous materials is in the best interest of people, property, and
15 the environment; and

16 WHEREAS, the Gainesville Fire Rescue Department is the provider of hazardous
17 materials emergency response services in the City of Gainesville; and

18 WHEREAS, the Gainesville Fire Rescue department is, by interlocal agreement, also a
19 member of the “North Central Florida Regional Hazardous Material Response Team”
20 (NCFRHMRT), which is designated by the North Central Florida Local Emergency Planning
21 Committee (NCFLEPC) to provide emergency response and control services for hazardous
22 materials incidents within those counties and municipalities who are members of the
23 NCFRHMRT; and

1 WHEREAS, the City Commission hereby declares the intent of the City of Gainesville to
2 establish this ordinance to allow the City of Gainesville Fire Rescue Department to recover the
3 cost of equipment, supplies, decontamination, waste management (treatment, storage, or
4 disposal) and related expenses associated with the response to and mitigation of a hazardous
5 materials incident within the municipal boundaries;

6 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY
7 OF GAINESVILLE, FLORIDA:

8 **Section 1.** Article III of Chapter 11.5 entitled Hazardous Material Incident Cost Recovery
9 of the Code of Ordinances, City of Gainesville, consisting of Sections 11.5-27 through 11.5-35
10 inclusive, is created to read as follows:

11 **Article III. Hazardous Material Incident Cost Recovery**

12 **Sec. 11.5-27. Hazardous Material Cost Recovery**

13 This Ordinance shall be known as and may be cited as the “Hazardous Material Incident
14 Cost Recovery Ordinance”

15 **Sec. 11.5-28. Authority**

16 The City of Gainesville has the authority to adopt this ordinance pursuant to and in
17 accordance with the provision of Chapter 166 and Chapter 252, Florida Statutes.

18 **Sec. 11.5-29. Intent and Purpose**

19 This ordinance is intended to provide for recovery by the City of Gainesville of costs
20 incurred in the response and recovery efforts related to hazardous material incidents. This
21 ordinance is also intended to provide for recovery of costs incurred by entities other than the City
22 of Gainesville, which are requested by the City of Gainesville to assist during a hazardous

1 material incident. In addition, it is intended to provide for cost recovery for damages to natural
2 resources and government-owned properties.

3 **Sec. 11.5-30. Rules of Construction**

4 The provisions of this ordinance shall be liberally construed so as to effectively carry out
5 its purpose in the interest of the public health, safety and welfare of the citizens and residents of
6 the City of Gainesville.

7 **Sec. 11.5-31. Definitions**

8 (A) Cost(s) shall mean and include, but is not limited to:

- 9 1. All costs incurred for response, containment and/or removal and disposal of
10 hazardous materials or remedial action.
- 11 2. Damages for injury to, destruction of, or loss of natural resources, including the
12 reasonable costs of assessing such injury, destruction, or loss resulting from a hazardous material
13 incident.
- 14 3. Costs of any health assessment or health effects study carried out as a necessity
15 resulting from a hazardous material incident.
- 16 4. Labor, including benefits, overtime and administrative overhead, exclusive of
17 normal departmental operations.
- 18 5. The cost of operating, leasing, maintaining, repairing, and replacement where
19 necessary of any equipment.
- 20 6. Contract labor and equipment.
- 21 7. Materials, including but not limited to, absorbents, foam, dispersants, overpack
22 drums, or containers.
- 23 8. Supervision and verification of clean up and abatement.

1 9. Labor and equipment obtained directly by the City of Gainesville, their agencies
2 or agents, and other agencies.

3 (B) “Fire Chief” shall mean the Chief of the fire department or fire district that
4 responded to a hazardous material incident.

5 (C) “Hazardous Material” shall mean any substance or material in any form or quantity
6 that poses an unreasonable risk to safety, health, or property.

7 (D) “Hazardous Substance” shall mean any material which when discharged may be
8 harmful to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and
9 public or private property, shorelines and beaches.

10 (E) “Hazardous Material Incident” shall mean actual or threatened release of hazardous
11 substances or materials that pose an immediate threat to the health, safety or welfare of the
12 population, including hazardous waste.

13 (F) “Incident Commander” shall mean the Senior Fire Official at the site of the
14 hazardous material incident; or the initial senior on-scene response official in the absence of the
15 Senior Fire Official; or a Unified Command Structure which delegates control to officials from
16 more than one agency.

17 (G) “Natural Resources” shall mean land, fish, wildlife, biota, air, water, ground water,
18 drinking water supplies, and other such resources belonging to, or otherwise controlled by the
19 City of Gainesville.

20 (H) “Recovery” (from an incident) shall mean a phase of emergency management that
21 restores the site of an incident to pre-emergency conditions.

22 (I) “Release” shall mean any spilling, leaking, pumping, pouring, emitting, emptying,
23 discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including

1 the abandonment or discarding of barrels, containers, and other receptacles containing any
2 hazardous material or substance or waste or pollutant or contaminant).

3 (J) "Response" shall mean a phase of emergency management that occurs during and
4 immediately following an incident. Provides emergency assistance to victims of the event and
5 reduces the likelihood of secondary damage.

6 (K) "Responsible Party" shall mean the person(s) whose negligent or intentional act or
7 omission caused a release; or, the person(s) who owned or had custody or control of, the
8 hazardous substance or waste at the time of such release without regard to fault or proximate
9 cause; or, the person(s) who owned or had custody or control of the container which held the
10 hazardous substance at the time of or immediately prior to such release without regard to fault or
11 proximate cause. "Responsible Party" may also include a corporation or partnership, facility, or
12 other type of business entity.

13 **Sec. 11.5-32. Hazardous Materials Incidents - Liability for Costs**

14 The Incident Commander or Fire Chief is hereby duly authorized to take all measures to
15 respond to and stabilize the hazardous material incidents. Any responsible party who causes a
16 hazardous material incident shall be liable to the City of Gainesville for the payment of all direct
17 costs incurred in response to, stabilization of, and any necessary monitoring of such an incident.

18 The City of Gainesville will seek all available remedies at law including the provisions of
19 this ordinance, against any parties responsible for any hazardous material incident, to include
20 those actions and remedies available under the United States Bankruptcy Code relating to such
21 matters.

22 **Sec. 11.5-33. Collection and Disbursement of Funds for Cost Recovery**

1 The Gainesville Fire Rescue Department shall serve as the City's agent for collecting
2 invoices and billing the responsible party for costs. Agencies of the City of Gainesville or
3 organizations responding to a hazardous material incident according to the responsibilities set
4 forth in the LEPC Region 3 Hazardous Materials Response Plan or at the request of the City of
5 Gainesville, will be eligible to submit bills.

6 Invoices that identify eligible costs under this article shall be submitted to the Fire Chief
7 or designee within ten (10) working days after the costs were incurred or identified. Submitted
8 invoices should include sufficient documentation for cost reimbursement (i.e., copies of time
9 sheets for specific personnel, copies of bills for materials, equipment, and supplies procured or
10 used, etc.). Accepting invoices from agencies outside the City of Gainesville shall not incur
11 liability to the City to pay costs from such agencies until payment has been received by the City
12 of Gainesville from the responsible party.

13 The Fire Chief or his designee shall submit one or a series of consolidated invoice(s) to
14 the responsible party identifying agencies or agents and their specific costs for reimbursement.
15 The responsible party shall issue a certified check to the City within sixty (60) days of receiving
16 any invoice. All funds received under the authority of this ordinance shall be disbursed
17 according to the claims submitted. Where the reimbursement is less than the requested amount,
18 each agency shall receive a pro rata share of such reimbursement as the agencies reimbursable
19 costs bear to the total reimbursable cost. The City of Gainesville shall not be liable to the agency
20 for any deficiency.

21 **Sec. 11.5-34 Verification and Supervision**

22 In the event that any person(s) undertakes, either voluntarily or upon order or direction of
23 the Incident Commander or Fire Chief, to clean up or abate the effects of any hazardous material

1 unlawfully released into the environment, the Incident Commander or Fire Chief may take any
2 action necessary to supervise or verify the adequacy of the cleanup or abatement. The person(s)
3 described in Section 11.5-32 of this ordinance shall be liable to the City for all costs incurred as a
4 result of such supervision or verification.

5 **Sec. 11.5-35 Conflict With Other Laws**

6 Whenever the requirements or provisions of this ordinance are in conflict with the
7 requirements or provisions of any other lawfully adopted ordinance, the more restrictive
8 requirements shall apply.

9 Further, this ordinance shall not restrict or replace cost recovery from funding sources
10 available under state and federal regulations such as the Revolving Fund established under
11 Section 311 (K) of the Federal Water Pollution Control Act {33 USC 1321 k}; the Hazardous
12 Substance Response Trust Fund established under Comprehensive Environmental Response,
13 Compensation, and Liability Act (42 USC 9611); and the Florida Coastal Protection Trust Fund
14 established under Chapter 376, F.S.

15 **Section 2.** It is the intention of the City Commission that Section 1 of this ordinance shall
16 become and be made a part of the Gainesville Code of Ordinance, of the City of Gainesville,
17 Florida, and that the Section and Paragraphs of this ordinance may be renumbered or re-lettered in
18 order to accomplish such intentions.

19 **Section 3.** If any section, sentence, clause or phrase of this ordinance is held to be invalid
20 or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect
21 the validity of the remaining portions of this ordinance.

22 **Section 4.** All ordinances or parts of ordinances, in conflict herewith are to the extent of
23 such conflict hereby repealed.

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Section 5. This ordinance shall become effective immediately upon adoption.

PASSED AND ADOPTED this _____ day of _____, 1999.

PAULA M. DELANEY
MAYOR

ATTEST:

Approved as to form and legality

CLERK OF THE COMMISSION

MARION J. RADSON
CITY ATTORNEY

This ordinance passed on first reading this ____ day of _____, 1999.

This ordinance passed on second reading this ____ day of _____, 1999.

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